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Supreme Court of the United States,

OCTOBER TERM, 1904.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE METROPOLITAN STREET RAILWAY COMPANY, *Plaintiff in error,* *versus* THE STATE BOARD OF TAX COMMISSIONERS.	No. 74
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE TWENTY-THIRD STREET RAILWAY COMPANY, *Plaintiff in error,* *versus* THE STATE BOARD OF TAX COMMISSIONERS.	No. 75
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE CENTRAL CROSSTOWN RAILROAD COMPANY, *Plaintiff in error,* *versus* THE STATE BOARD OF TAX COMMISSIONERS.	No. 76

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

WILLIAM D. GUTHRIE,
of counsel for plaintiffs in error.

WASHINGTON, April 6, 1905.

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ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

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The above entitled cases involve the constitutionality of an act of the legislature of the state of New York, entitled "An act to amend the Tax Law, in relation to the taxation of public franchises as real property," approved May 26, 1899, to take effect October 1, 1899 (L. 1899, ch. 712, p. 1589). The statute is commonly known as the "Special Franchise Tax Law." The

plaintiffs in error contend that this statute is in contravention of the Constitution of the United States in that it impairs the obligations of the contracts under which they acquired and own their franchises, and operates to deny them due process of law and the equal protection of the laws.

SPECIFICATION OF ERRORS RELIED UPON.

The assignments of errors which give rise to these contentions are the same in each case, and with the exception of the name of the plaintiff in error, read as follows (Metropolitan record, p. 565; Twenty-third Street record, p. 154; Central Crosstown record, p. 460):

> I. Error in declining to hold that the act of the legislature of the State of New York, approved May 26th, 1899 (ch. 712, L. 1899), entitled "An Act to amend the tax law, in relation to the taxation of public franchises as real property," in so far as it authorizes the assessment imposed by the State Board of Tax Commissioners on March 20, 1900, upon the franchises of the [plaintiff in error], relator above named, deprives said relator of its property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States.
>
> II. Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, denies to said relator the equal protection of the laws, in contravention of the Fourteenth Amendment to the Constitution of the United States.
>
> III. Error in declining to hold that said legislative enactment, in so far as it authorizes the said assessment, impairs the obligations of contracts, in contravention of section 10, article 1, of the Constitution of the United States.

The writs of error in each case were properly

directed to the Supreme Court of the state of New York and not to the Court of Appeals, in view of the practice in that state for the latter court, the highest court of the state, to remit its judgment, together with the record, to the Supreme Court, where the judgment is entered and in which court the record remains. *Tinker* v. *Colwell*, 193 U. S. 473; *Wedding* v. *Meyler*, 192 U. S. 573, 581; *Crossman* v. *Lurman*, 192 U. S. 189, 195. The several proceedings were instituted in the courts below pursuant to the statute which provides for a judicial review of any assessment for taxation (L. 1899, ch. 712, sec. 45, p. 1592), and there is no question in the case but that the plaintiffs in error had to raise the questions involved in some such proceedings, or not at all.

The jurisdiction of this court to hear and determine the controversy presented by the specifications of error duly appears in the record. The invalidity of the statute, as being repugnant to the contract clause of the Constitution of the United States, was drawn in question in each case by the use of appropriate language, referring in explicit terms to that clause (Metropolitan rec., pp. 6–7, 512; Twenty-third Street rec., pp. 6–7, 108; Central Crosstown rec., pp. 6–7, 416), and the federal questions under the Fourteenth Amendment were also sufficiently raised and the decision was against the right claimed (see point III).

STATEMENT.

The Special Franchise Tax Law of 1899 is a new experiment in the legislation of the state of New York, and subjects to a general law of *ad valorem* taxation the

local or special franchises, rights, or privileges which are exercised in public highways, streets, etc., by corporations furnishing what are now comprehensively termed public utilities, such as transportation, gas, electric light, telephones, etc. These franchises were not previously taxed by any general tax law, although numerous existing franchises were subject to the payment of annual sums or percentages of gross receipts, which were in the nature of, or equivalent to, taxes.

The subject is one of general interest in all the states, and the far-reaching consequences which must result from the principles upon which the present cases are determined invite the most careful consideration. It is of great concern and interest to many state governments and to numerous corporations similarly situated that this court shall indicate whether existing contracts granting such franchises are protected against impairment by this new form of subsequent legislation, and whether such legislation must tax all owners of franchises engaged in substantially the same business and under substantially the same conditions with equality so far as practicable. If the present statute is upheld, it undoubtedly will be followed by similar legislation in every state (see Final Report of U. S. Industrial Commission, vol. 19, pp. 1061–2), and if it impairs existing contracts and embodies unjust and discriminating provisions, it ought not to be permitted to become a precedent, when an amendment of the statute can easily obviate the objections.

The principal franchises owned by the plaintiffs in error and sought to be subjected to taxation under the

new law were granted by the city of New York under legislative authority and were the subject of express contracts between the city and the several railway companies. The statutes, ordinances, etc., material to the case are printed in the accompanying pamphlet.

The statute now before the court was approved May 26, 1899, to take effect October 1, 1899 (L. 1899, ch. 712, p. 1589). Its object, as expressed in its title, was "to amend the tax law, in relation to the taxation of public franchises as real property." It consists of five sections. Section 1, by way of amendment to subdivision 3 of section 2 of the general tax law (L. 1896, ch. 908, p. 796), transubstantiates "special franchises" into real property for the purpose of taxation as such, defines a "special franchise" as a "franchise, right, authority or permission" to use the streets, highways and public places of the state for certain purposes, including the right "to construct, maintain or operate" "surface, underground or elevated railroads" and "any mains, pipes, tanks, conduits or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil or other substance, or electricity for telegraphic, telephonic or other purposes." It also provides that such a special franchise shall include "the tangible property . . . situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise" which "shall be taxed as a part of the special franchise," and that "no property of a municipal corporation shall be subject to a special franchise tax." Section 2 adds to article II of the existing tax law

six new sections, numbered 42 to 47. Sections 42 to 44, inclusive, empower the state board of tax commissioners to "annually fix and determine the valuation of each special franchise subject to assessment," as a basis for taxation "during the next ensuing year," and provide the machinery for such purpose. Section 45 provides for a hearing and determination of complaints concerning assessments, and for a review of such determination by writ of certiorari from the Supreme Court to the state board of tax commissioners. Section 46 provides for a deduction from the amount of the tax in any city, town or village based on the assessment of the state board, of any amounts "paid to such city, town or village for its exclusive use within the next preceding year, under any *agreement* therefor, or under any *statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise*,[1] granted to or possessed by such person, copartnership, association or corporation, which payment was in the nature of a tax." And section 47 provides that the imposition or payment of the special franchise tax shall not relieve "any association, copartnership or corporation from the payment of any organization tax or *franchise* tax or any *other* tax otherwise imposed by article nine of this chapter, *or by any other provision of law*," and that "tangible property subject to a special franchise tax . . . shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners." The

[1] The italics throughout this brief are not in original quotations.

remainder of the act provides machinery for the collection of the tax upon special franchises, according to the assessment thereof by the state board, the details being of no material importance in the present cases.

Prior to 1874, it had generally been the custom of the legislature of the state of New York to make direct grants of franchises, rights, or privileges to use the streets of the city of New York, and eight of the franchises involved in the cases at bar were thus granted (Metropolitan rec., pp. 60, 64, 66; Twenty-third Street rec., pp. 34, 40, 44; Central Crosstown rec., pp. 32, 335; pamphlet, pp. 105, 108, 111, 114, 177, 180, 185, 195). In 1874, however, a constitutional amendment was adopted, whereby the power of the legislature was restricted so that no further grants of franchises could be made without the consent of the local authorities. Such amendment reads as follows (Const. of 1846, as amended, art. III, sec. 18; pamphlet, p. 53):

> "The legislature shall not pass a private or local bill in any of the following cases: . . .
>
> "Granting to any corporation, association or individual the right to lay down railroad tracks. . . .
>
> "But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property-owners cannot be obtained, the general term of the supreme court, in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such rail-

road ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property-owners."

This constitutional amendment went into effect on the first of January, 1875, but for nearly ten years, no statute was passed in respect of street surface railways. In 1884, the legislature passed an act (L. 1884, ch. 252; pamphlet, p. 54), which authorized the local authorities to grant to street surface railway companies franchises to use the streets of the cities and villages of the state and regulated the exercise of the right to consent on the part of the local authorities. This statute authorized the local authorities, at their option, to sell at public auction the franchise, right, or privilege, and in addition required, in the case of cities having a population of two hundred and fifty thousand or more, that the grantee of the franchise should pay a fixed percentage of gross receipts, being three per cent. during the first five years and five per cent. thereafter. These provisions were separate and distinct, the first being embodied in section 7 of the act and the second in section 8, and the relevant parts of each section are as follows (L. 1884, ch. 252, p. 312):

"§ 7. The local authorities of any incorporated city or village to whom application, under the provisions of this act, may be made for consent to the construction, maintenance, use, operation or extension of a street surface railroad upon any street, road, avenue or highway, may, at their option, provide for the sale of, and sell at public auction the franchise, subject to all the provisions of this act, to so con-

struct, maintain, use, operate or extend such street surface railway. . . .

"§ 8. Every corporation incorporated under, or constructing or operating a railroad constructed or extended under the provisions of this act, within the cities of the state having a population of two hundred and fifty thousand or more, as aforesaid, shall for and during the first five years after the commencement of the operation of any portion of its railroad, annually, on the first day of November, pay into the treasury of said respective cities in which its road is located to the credit of the sinking fund thereof, three per cent. of its gross receipts for and during the year ending the next preceding thirtieth day of September, and after the expiration of said five years, make a like annual payment into the treasury of said respective cities, for the credit of said sinking funds, of five per cent. instead of three per cent. of said gross receipts; provided, however, that every corporation now existing and operating a street surface railroad which shall extend its tracks or construct branches therefrom, and operate such extensions or branches under the provisions of this act, or the corporation operating such branches or extensions, shall pay such percentages as aforesaid only upon such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension and branches shall bear to the entire length of its tracks."

The provisions of section 8 were required to be made the subject of contract between the local authorities and the street railroad companies by the following provision of section 4 (pamphlet, p. 57):

"The consent of the local authorities shall in all cases be applied for in writing, and when granted shall be upon the express condition that the provisions of this act pertinent thereto shall be com-

plied with, and shall be filed in the office of the county clerk of the county in which said railroad is located."

At the time the act of 1884 was passed, it was generally understood that it imposed and provided for what was equivalent to a tax, and such was the practical interpretation of it by the executive department of the state. Thus, in a paper filed by Governor Cleveland approving the act of 1884 (Public Papers of Governor Cleveland, 1884, pp. 108, 113; pamphlet, p. 195), it was among other things stated as follows:

> "The *tax* which may be imposed upon the gross earnings of roads constructed or extended in cities and villages, to be paid into the treasury of such cities and villages, and the stringent provisions contained in the bill to compel its prompt payments, commend the measure as one likely to yield to the people of the localities a substantial return for the franchises conferred. . . .
>
> "The objection that existing roads should pay a percentage on the receipts from their entire line in case of an extension, it seems to me, is not tenable. Their existing lines were not built in contemplation of any such *tax*, and if they are extended under the act, it is more just and equitable to charge them with a *tax* on some portion of their receipts than on the whole. I know of no more fixed and definite rate than to put the *tax* upon such a proportion of their receipts as their extension bears to the entire line. This is the rule adopted in the act."

Thereafter, in 1886, the legislature passed an act which repealed parts of the act of 1884, and made it compulsory upon the local authorities that every franchise, right, or privilege should be put up at auction

and awarded to the bidder of the highest annual percentage of gross receipts, but in no event to be less than three per cent. for the first five years and five per cent. thereafter. The material language of this act was as follows (L. 1886, ch. 65, p. 81; pamphlet p. 65):

> "Section 1. The local authorities of any incorporated city or village to whom application may be made for consent to the construction, maintenance, use, operation or extension of a street railroad or railroad or railway for the transportation of passengers, mails or freight over, upon, under, through or across any of the streets, roads, avenues, parks or public places in such city or village, must provide as a condition of the said consent to the use of said street, road, avenue, park or public place, that the right, franchise and privilege of using the said street, road, avenue, park or public place, shall be sold at public auction to the bidder who will give the largest percentage per annum of the gross receipts derived from the operation of said railroad or railway, with adequate security as hereinafter provided for the payment of such percentage, provided that in cities having a population of two hundred and fifty thousand or more, such percentage shall in no case be less than three per centum per annum of such gross receipts for and during the period of the first five years of the operation of any portion of said railroad or railway, and five percentum per annum of such gross receipts after the expiration of five years. The legislature expressly reserves the right to regulate and reduce the rate of fare on such railroad or railway."

This act (sec. 4) expressly repealed section 7 of the

act of 1884, but did not mention section 8. The provisions of section 8 are, however, in effect repeated by the proviso in the act of 1886 that, in cities having a population of two hundred and fifty thousand or more, the percentage to be bid at the auction sale shall in no case be less than three per cent. during the first five years and five per cent. thereafter.

During the same year, the last mentioned act was amended at a special session of the legislature, so as to omit the proviso that in cities having a population of two hundred and fifty thousand or more the percentage of gross receipts should not be less than three per cent. per annum during the first five years and five per cent. thereafter, and to substitute a provision that "this agreement shall not release any such road from the percentages required to be paid by chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four" (L. 1886, ch. 642, sec. 1, p. 920; pamphlet, p. 67).

At the session of 1889 (L. 1889, ch. 564), the first act of 1886 above mentioned (ch. 65), was again amended so as to impose further obligations upon the successful bidder, but the provisions which are important in the cases at bar remained practically unchanged.

In 1890 (L. 1890, ch. 565), the laws of the state were codified and a general railroad law was passed, and section 1 of the act of 1886, as amended, providing for the sale of the franchise at public auction to the bidder who would give the largest percentage per annum of the gross receipts, became section 93 of said railroad law, applying to cities of ninety thousand inhabitants or over, and sec-

tion 8 of the act of 1884, providing, as above stated, for the fixed annual percentage on gross receipts, became section 95 of said railroad law without substantial change.

Section 93 of the railroad law was subsequently amended (L. 1892, ch. 306) so as to make it applicable only to cities having a population of twelve hundred and fifty thousand inhabitants or more, and also by adding the following provision:

> "Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor, and further, that if such right shall be purchased by any corporation other than the applicant that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor, and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road."

The legislature in passing the acts above mentioned seems to have treated them as tax measures, which, under section 21 of article III of the constitution of 1846, as amended, required the taking of the vote by yeas and nays "which shall be duly en-

tered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein." An examination of the official publication of the laws will show that three-fifths are recited as having been present, as in the case of all other tax measures, and the journals of both houses of the New York legislature also disclose that the vote was duly recorded as having been taken by yeas and nays when three-fifths of all the members elected to either house were present.

A number of franchises for street railroads in New York and other cities of the state prior to the year 1884 were granted for little or no consideration. Many of these grants were made at a time when no one thought them of any value, and when the city was casting about in the markets of the world endeavoring to induce capital to undertake the building of horse-car lines for the benefit of a community which was then unwilling to tax or bind itself for any such purpose. As to many of these grants, the language of Mr. Justice Peckham, speaking for the Court of Appeals in *Mayor, etc., of New York* v. *M. R. Co.*, 143 N. Y. 1, 30–31, is applicable, viz.,

> "When the Rapid Transit Act of 1875 was passed the answer to the question whether the plan therein provided for would prove a success was in great doubt. Certain privileges and franchises were provided to be given companies organized or operating a road under the act, and in return certain conditions and burdens were exacted from and imposed upon such companies. The persons who might be found willing to invest capital in the project might, in one sense, be termed 'adventurers,' because they would be in-

> vesting their money in a scheme the result of which was then most doubtful, and which might leave them with their capital wasted, and with a costly and at the same time worthless structure on their hands. It is safe to say if at that time the interest of abutting owners had been understood to be as it has been since decided, not a railway would have been built under the provisions of this act of 1875."

The development of the transportation facilities of the city of New York during the life of the present generation is one of the marvels of our times, and affords a most striking example of the results produced by venturesome investors and by the constant application of new inventions and new methods. It is common knowledge that nothing has contributed so potently to the growth and wealth of the city as the improvements in transportation facilities afforded by the various interurban railway lines. Some idea of the magnitude of the undertaking may be realized from the fact that the Metropolitan System alone carried during the year 1900 more passengers than all the steam railroads of the United States combined (Metropolitan rec., p. 201).

Indeed, it is less than twelve years since the city was served by miserable lines of clumsy and ill-ventilated cars or stages drawn by horses. Within that period, two great revolutions in surface transit methods have occurred. In 1893, most of the plant of horse-car and stage lines became worthless, and had to be abandoned because of the introduction of underground cables at enormous expense, the official reports and public records showing for the three principal lines an aggregate expenditure of over $28,000,000. Within a few years there-

after, the increasing demands of the public and the results of experiments in electricity required the companies to discard all their cables and to introduce the electric system. The expense to the Metropolitan Company alone was $6,000,000, without regard to the value of discarded plant and apparatus rendered useless (Metropolitan rec., pp. 200, 273, 274). The men who introduced these improvements and risked the capital necessary to make them practicable thus staked millions upon their forecast of the growth of the community which they were to serve, and had that forecast proved erroneous, the loss of the investment was certain.

Since 1884 the city of New York and numerous other cities of the state have collected very large sums from the annual payments or percentages of gross receipts paid by street surface railway companies situated as the plaintiffs in error, and these collections have uniformly been treated as city revenue for public uses, and in one form or another applicable to the purposes for which other taxes were devoted. The amounts thus collected by the city of New York, during these sixteen years, from 1885 to 1900, inclusive, amounted in the aggregate to $2,971,589, or an average during those years of over $185,700 per annum, and this is constantly increasing with the increase of the gross receipts. These payments are in addition to the numerous other forms of taxes to which street surface railway companies were being subjected. Such corporations as the plaintiffs in error, street surface railway companies, were and for many years had been paying at least six different forms of

taxes to the state and local authorities (Metropolitan rec., p. 523). The record shows that the taxes charged against the Metropolitan Company alone and its leased roads are six or seven separate and distinct state and local taxes, and that the amount of the taxes assessed against it and its leased lines for the year 1900, exclusive of the additional special franchise tax involved in the present controversy, represents the aggregate of $955,989 (Metropolitan rec., pp. 503, 523).

On March 27, 1899, the Governor of the state of New York sent to the legislature a message in which he called attention to the subject of the taxation of local or special franchises, and, referring to the existing method of securing taxes by way of a percentage of gross receipts on certain existing special franchises, used the following language (Public Papers of Gov. Roosevelt, 1899, pp. 54-57; pamphlet, p. 202):

> "One thing is certain, that the franchises should in some form yield a monied return to the government. To put on a tax here and there as new franchises are asked for may be advisable, but of course is inequitable, to the extent that it handicaps the few thus taxed in their competition with the untaxed corporations; and it may be that now and then some franchise to perform an especially needful and risky service should not be thus handicapped at all."

The legislature thereupon passed a statute which was not acceptable to the Governor because, among other things, of the omission to provide for the deduction from the new tax of the amounts which the grantees of special franchises were already under contract obligation to pay to the local municipalities. The Governor, therefore, immediately called a special session of the legislature

and sent a second message under date of May 22, 1899, in which the whole subject was again discussed and in which he referred to the existing taxes being paid by corporations such as the plaintiffs in error (Public Papers of Governor Roosevelt, 1899, pp. 102–110). The message is printed at length in the pamphlet of laws, etc., and the part applicable to the question now being discussed is as follows (pamphlet, p. 208):

> "Furthermore, the bill before me fails to take account of the fact, that, in a very unequal and irregular way, *many corporations do already pay a certain, though usually an utterly inadequate, sum in taxes.* Some pay nothing at all to the local municipalities; but *others pay sums varying from one to five per cent. on their gross earnings.* The amounts have been determined in the most haphazard manner and bear no proportion whatever to the value of the franchises or to their earning capacity. *It is obviously unjust* when introducing a system under which we believe that these franchises will for the first time be fully and fairly taxed according to their respective values, *not to allow for this existing and inequitable taxation.* Accordingly it should be provided that from the sum assessed by the State authorities as the tax which a corporation must pay because of its local franchise, there shall be deducted the amount already annually paid by it to the locality for such franchise. In no other way is it possible to tax these corporations with uniformity and equity. It is contended by the advocates of the bill that in reaching the value of the franchise under the new law the amount thus paid away in *taxes* must be allowed for and deducted anyhow, but it is not certain that this would be done, and in any event the principle should be definitely established in the law itself. There can be no possible opposition to putting it in the law by any man who is anxious to tax

corporations as other property is taxed, and who believes that this end can be attained by taxing them as realty. Either by taxing them as realty we shall tax them at their full value, or we shall not; if, as we hold, the former is the case, it would be unjust to tax them for more than their full value, and this would happen were not these *existing taxes* deducted."

In compliance with this recommendation of Governor Roosevelt as to *existing taxes*, the legislature passed the act of 1899, now before this court, which, among other things, provides as follows (L. 1899, ch. 712, secs. 46, 47; pamphlet, p. 5):

"§ 46. *Deduction from special franchise tax for local purposes.*—If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, copartnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, copartnership, association, or corporation, which payment was *in the nature of a tax*, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, shall be deducted from any tax based on the assessment made by the state board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. . . .

"§ 47. *Special franchise tax not to affect other tax.*—The imposition or payment of a special franchise tax as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or *franchise* tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property subject to a special franchise tax situated in, upon, under or above any street, highway, public place or public waters, as described in subdivision three of section two shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners."

There were no payments being made for local or special franchises in the state of New York when this message was written by Governor Roosevelt, or when the act was passed, other than payments such as the plaintiffs in error were making under existing franchise grants or contracts.

The special facts relating to the three separate companies, plaintiffs in error, may be briefly stated as follows, taken as of the date of the assessment in question, namely, January 8, 1900:

(No. 74.) The Metropolitan Street Railway Company is a New York corporation engaged in operating and maintaining surface railroads in the streets of the city of New York. It was formed by the consolidation of seven other corporations, namely, the Houston, West Street & Pavonia Ferry Railroad Company, the Broadway Railway Company, the South Ferry Railroad Company, the Metropolitan Crosstown Railway Company, the Lexington Avenue & Pavonia Ferry Railroad Company, the Columbus & Ninth Avenue Railroad Company, and the Chambers Street & Grand Street Ferry Railroad

Company (record, pp. 212, 516, 2d finding of fact). The Metropolitan Company owned special franchises embracing eighteen separately granted rights to lay railroad tracks in the streets of the city of New York (record, p. 518). A majority of these grants had not been made to it but to the corporations which were subsequently consolidated into it. The franchises and exemptions of the consolidating corporations, however, were by the terms of the statute expressly preserved and transferred to the new company. Railroad Law, sec. 72.

Three of these franchises were granted by special act of the legislature and before the constitutional amendments of 1874 took effect on January 1, 1875, viz., L. 1868, ch. 625; record, pp. 64-66, 427 *d*; L. 1871, ch. 19; record, pp. 66-68, 427 *e*; L. 1874, ch. 508, as amended by L. 1875, ch. 393; record, pp. 60-62, 427 *b*. The other fifteen franchises were granted by ordinances of the common council of the city of New York adopted after the passage of chapter 252, Laws of 1884, and pursuant to the provisions of that act and the subsequent statutes above mentioned.

The terms of these eighteen franchises are set forth in detail in the eleventh finding of fact (record, pp. 518-521), and all except one provide for an annual payment to the city of New York of either a fixed amount or a fixed percentage varying from two to eight per cent. of gross earnings.

Of the three acquired under special acts, one provides for the payment of $1,000 annually besides license fee (record, pp. 64, 427; L. 1868, ch. 625), another for

compensation as fixed by commissioners (record, pp. 66, 427; L. 1871, ch. 19) which, as the public records show, was fixed at $1,000 per annum, and the third for two per cent. of gross receipts (record, pp. 60, 62, 427; L. 1874, ch. 508, as amended by L. 1875, ch. 393). The remaining franchises acquired under the general laws beginning in 1884, were as follows: Broadway Surface Railroad Company, December 5, 1884, three per cent. of gross receipts for first five years and five per cent. thereafter, and also $40,000 per year after the first year (record, pp. 52, 426); Chambers Street & Grand Street Ferry Railroad Company, December 30, 1884, three per cent. of gross receipts for first five years and five per cent. thereafter (record, pp. 63, 427; L. 1884, ch. 252); Metropolitan Crosstown Railroad Company, December 31, 1889, six per cent. of gross receipts to 1896 and eight per cent. thereafter (record, pp. 84, 428; L. 1886, ch. 642, as amended by L. 1889, ch. 564); Lexington Avenue & Pavonia Ferry Railway Company, September 29, 1892, three and one-half per cent. of gross receipts for first five years and five and one-half per cent. thereafter (record, pp. 68, 429); Houston, West Street & Pavonia Ferry Railroad Company, three franchises September 29, 1892, three per cent. of gross receipts for first five years and five per cent. thereafter (record, pp. 72–81, 427, 428); Metropolitan Crosstown Railroad Company, three franchises, September 29, 1892, three per cent. of gross receipts

for five years and five per cent. thereafter (record, pp. 88–96, 428); Columbus & Ninth Avenue Railroad Company, October 10, 1892, three and one-quarter per cent. of gross receipts for first six years and five and one-quarter per cent. thereafter (record, pp. 97, 429; Railroad Law, secs. 93, 95; L. 1890, ch. 565, as amended by L. 1892, ch. 306); Columbus & Ninth Avenue Railroad Company, two franchises, September 18, 1894, three and one-quarter per cent. of gross earnings for first five years and five and one-quarter per cent. thereafter (record, pp. 100, 429–430); Metropolitan Street Railway Company, April 14, 1896, three per cent. of gross receipts for five years and five per cent. thereafter (record, pp. 102, 429); Metropolitan Street Railway Company, January 8, 1894, three and one-tenth per cent. of gross receipts for first five years and five and one-tenth thereafter (record, pp. 106, 429; Railroad Law, as amended by L. 1893, ch. 434).

The Metropolitan Company was also the lessee of the following railroads, under leases obligating it to pay taxes, namely, the Broadway & Seventh Avenue Railroad Company, the Central Park, North & East River Railroad Company, the Eighth Avenue Railroad Company, the Forty-second Street & Grand Street Ferry Railroad Company, the New York & Harlem Railroad Company, the Ninth Avenue Railroad Company, the Second Avenue Railroad Company, the Sixth Avenue Railroad Company, and the Twenty-third Street Railroad Company, the last mentioned company being in turn the lessee of the Bleecker Street & Fulton Ferry Railroad

Company. It is not necessary to trace the details and dates of these various leases, which will be found fully set forth in the record, as their provisions are not material except to show liability for taxes (pp. 155-159). The special franchises of these leased companies have not been assessed against the Metropolitan Street Railway Company, the lessee, but against the several lessor companies and the taxes on the special franchises of such leased companies, although payable by the Metropolitan Company, are involved in separate cases now pending, which by stipulation are to abide the result of the present test cases.

(No. 75.) The Twenty-third Street Railway Company is also a street railway corporation organized and existing under the laws of the state of New York, and was the lessee of two street railroad franchises which were owned by the Bleecker Street & Fulton Ferry Railroad Company. The Twenty-third Street Company owns two separately granted special franchises, both acquired under special acts, one upon the payment of $150,000 in full compensation for the grant (record, pp. 34, 36; L. 1869, ch. 823; L. 1872, ch. 521), and the other without pecuniary compensation (record, p. 40; L. 1873, ch. 100).

(No. 76.) The Central Crosstown Railroad Company is also a New York corporation engaged in operating and maintaining a surface railroad in the streets of the city of New York, and was the lessee of a street railroad franchise owned by the Christopher & Tenth Street Railroad Company (record, p. 83). The Central Company owns one special franchise,

acquired under special act, providing for the payment of three per cent. of gross receipts (record, p. 32; L. 1873, ch. 160).

The actual operation and effect of the Special Franchise Tax Law now in question does not appear in detail in the records before the court because the present proceedings involve, not the amount of any particular tax, but an assessment as a basis or ground for state and local taxes. Under the laws of the state of New York, the assessment, if uncontested and confirmed, would have definitely fixed the liability for the payment of taxes, and hence the only form of litigation in which the validity of the statute could be tested, in so far as it affected the plaintiffs in error and subjected their franchises to *ad valorem* taxation, was by certiorari to review the assessment, as expressly provided in the statute itself (L. 1899, ch. 712, sec. 45). The franchises of each company were assessed as an entirety; those of the Metropolitan Company at $23,270,730 (Metropolitan rec., p. 432), those of the Twenty-third Street Company at $2,330,140 (Twenty-third Street rec., p. 79), and that of the Central Crosstown Company at $1,197,020 (Central Crosstown rec., p. 356). These several amounts, being excessive, were finally reduced respectively to $12,313,200.37 (Metropolitan rec., p. 436), $1,326,114.92 (Twenty-third Street rec., p. 83) and $392,414.31 (Central Crosstown rec., p. 359). The tax rate applicable "for the year of the special franchise assessment" appears by stipulation to be .0224771, of which the rate for the city was .0193632, about two per cent. and for

the state and county .0031139, about one quarter of one per cent. (Metropolitan rec., p. 223; pamphlet, p. 210).

The amount of tax liability appears in the public records of the city, of which the courts below would take judicial notice without proof.[1]

It appears by the public records that the Metropolitan Company became liable in 1900 to pay a tax to the city upon the assessment of its special franchise of $276,765.03, and that the payments to the city under the acts above mentioned for the year 1900 aggregated $185,490.21, leaving involved in the controversy now before this court the balance of $91,274.82 as to that particular company. In the case of the Central Crosstown Company, the amount of taxes which it became liable to pay to the city under the new law was $8,820.33, while its deductible payments were $7,853.46, leaving the net tax involved in this controversy $966.87. As to the Twenty-third Street Company, its liability for taxes under the statute in question was $29,807.21, from which it was entitled to make no deductions whatever because it had no agreement for annual payments, its only payment having been a lump sum of $150,000 for the franchise granted in 1872 (Twenty-third Street rec., pp. 34–36, 77–78). The difference between the above mentioned sum of $185,490.21, deductible by the Metropolitan Company, and the figure $255,188.82 set forth in the record at

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[1] *New York Indians* v. *United States*, 170 U. S. 1, 32; *United States* v. *Teschmaker*, 22 How. 392, 405; *Romero* v. *United States*, 1 Wall. 721, 742.

p. 523 arises from the fact that the latter figure includes some of the leased lines. It may be stated, however, that the public records show that the amounts payable in 1900 by the Metropolitan Company and all its leased and subsidiary lines in respect of percentages on gross receipts and other franchise payments amounted to $342,753.62, and that the present Special Franchise Tax Law increased these payments to $710,629.17, an increase of $367,875.55.

The two questions of constitutional law to be discussed are (1) whether the act of 1899, subjecting to additional taxation for state and local purposes the special franchises owned by the plaintiffs in error, impairs the obligation of existing contracts (p. 27), and (2) whether the statute unjustly and arbitrarily discriminates among owners of the same class of property and thereby violates the Fourteenth Amendment (p. 91). The third point discussed is one of practice (p. 108).

I.

As to the impairment of contract obligations.

The contention of the plaintiffs in error is that the obligations of the several contracts under which they acquired their local or special franchises are impaired by the statute now before the court in so far as it seeks to subject such franchises to additional payments or taxation in excess of the amounts agreed upon. The learned referee, whose opinion was approved by the Court of Appeals, among other things, said (Metropolitan rec., p. 456):

> "It is conceded that if the city or the state had exacted from these corporations for the use of their franchises, additional conditions or further payments than originally stipulated, such exaction would have been illegal as impairing the obligation of contracts."

And Judge Cullen in the recent case of *Heerwagen* v. *Crosstown St. Ry. Co.*, 179 N. Y. 99, 104, speaking of the present statute, used the following language:

> "Moreover, if a valid agreement as to taxation should actually exist, it would seem doubtful at least whether the taxation could be increased."

Assuming this concession to be repeated in this court, and if not, that the proposition is indisputable, the controlling inquiry will be whether the present statute, in subjecting special franchises to *ad valorem* taxation, does or does not exact further payments than those originally stipulated for in the contracts granting the several franchises.

In order, at the outset, to bring the discussion within its proper limits and to eliminate matters which are not involved or questioned, it will be convenient to state the present law and practice upon the subject of the taxation of corporations by the states, and this will serve to distinguish cases not in point.

There are numerous separate and distinct subjects or objects of corporate taxation, and any or all of these may be selected by the legislature for the purpose of levying and collecting taxes. It is settled law that the taxation of one of these subjects is not the taxation of the other, and that the exemption of one

or more does not involve the exemption of the others. It is also settled that the assessment of two or more of these subjects at the same time does not constitute duplicate or double taxation.

In addition to the incorporation or organization tax found in all the states, the following separate and distinct objects are constantly being selected for corporate taxation, viz.,

(1) The franchise, right, or privilege to be a corporation;

(2) Other franchises, rights or privileges, such as the right to use the public highway or streets of a municipality, to lay gas mains, electric conduits, etc., to conduct a bank, etc.;

(3) License fees or excise taxes upon occupations;

(4) The capital stock of the corporation;

(5) The real property of the corporation;

(6) The personal property of the corporation;

(7) The surplus of the corporation;

(8) The gross or net earnings of the corporation;

(9) The dividends declared and paid by the corpotion to its stockholders;

(10) The cost of supporting special governmental bureaus;

(11) The shares of stock, or the value thereof, in the hands of the stockholders.

These familiar modes of taxation have been repeatedly before this court and the courts of the state of New York; but the different methods are becoming so intermingled and complicated that the courts are beginning to confess confusion and the danger of error in their decisions. *People ex rel. U. S. A. P. P. Co. v. Knight*, 174 N. Y. 475, 477. The leading cases in this court

pointing out these different subjects are *Farrington* v. *Tennessee*, 95 U. S. 679, 686; *Tennessee* v. *Whitworth*, 117 U. S. 129, 136; *New Orleans* v. *Houston*, 119 U. S. 265, 277; *Gibbons* v. *Mahon*, 136 U. S. 549, 557; *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664, 681.

The plaintiffs in error concede, for the purposes of these cases, that they are subject to all the forms of taxation above enumerated, whether on property, franchise to be a corporation, capital stock, dividends, or other objects not made the special subject of contract, and that the local or special franchises involved in the present controversy constitute property, but they contend that they have entered into valid contracts definitely fixing the amount to be paid for and on their special franchises, and that neither the state nor the city can increase these amounts by way of taxes or otherwise without impairing the obligations of their contracts. They further contend that the state or city, while enforcing the existing contracts to the letter and insisting upon the payments therein provided for, cannot exact additional payments; in other words, must be content to measure the taxes by the terms of the existing contracts.

The inquiry to which the attention of the court is to be directed is, therefore, not whether special franchises are property subject to taxation, but as to the nature and legal effect of the contracts entered into with respect to those franchises.

Prior to the constitutional amendment of 1874, it had been the settled law of the state from the early case of *The People* v. *Kerr*, 27 N. Y. 188, that the streets of the city of New York did not belong to the municipality; that although the technical legal title was vested in the city, the beneficial use was in the people of the state, and that the municipality had no right or property therein which it could sell or rent or dispose of as such. The constitutional amendment made no substantial change in this respect, except to impose the condition of the consent of the local authorities. It did not of itself confer any right to sell or dispose of franchises to use the streets, and it is still the settled law of the state of New York that, notwithstanding the amendment of the constitution, the city can exact no compensation for the use of its streets, except as directly and specifically authorized by the legislature. Thus, in the case of *Beekman* v. *Third Avenue R. R. Co.*, 153 N. Y. 144, 152, O'Brien, J., delivering the unanimous opinion of the Court of Appeals, used the following language:

> "The authority to make use of the public streets of a city for railroad purposes primarily resides in the state, and is a part of the sovereign power, and the right or privilege of constructing and operating railroads in the streets, which for convenience is called a franchise, must always proceed from that source, whatever may be the agencies through which it is conferred. The use or occupation of the streets for such purposes, without the grant or permission of the state through the legislature, constitutes a nuisance, which may be restrained by individuals injuriously affected thereby. (*Fanning* v. *Osborne*, 102 N. Y. 441.) The

> city authorities have no power to grant the right except in so far as they may be authorized by the legislature, and then only in the manner and upon the conditions prescribed by the statute. (*Davis* v. *Mayor, etc.*, 14 N. Y. 506; *Milhau* v. *Sharp*, 27 N. Y. 611; *People* v. *Kerr*, Id. 188.)"

The court held that the provision in the several statutes for an *annual* payment must be explicitly followed, notwithstanding the absence of prohibitive words, and that since 1886 the local authorities had no right to accept a cash payment of a lump sum, or to impose any pecuniary condition upon the granting of its consent other than the annual payments provided for in the statute. The court also declared that, under the act of 1886 and amendments, it was the policy of the legislature to limit that for which the city might stipulate and receive to a *fixed annual percentage*, and that any additional pecuniary consideration, such as the payment of a lump sum, could not be permitted to enter into the execution of the trust or agency confided by statute to local authorities for the benefit of the public. It is thus authoritatively declared, by the highest court of the state, to be not only the meaning of the language of the statute but the spirit and policy of the law to provide revenue for public purposes by a *fixed annual percentage*, which the local authorities could not in any way change, commute or add to, however tempting or advantageous the receipt of a large lump sum might temporarily seem to be.

There is now presented to the court for interpretation a long series of contracts entered into by the city of New York with the plaintiffs in error or their pre-

decessors, under direct authority of the legislature, which specifically fix the amount to be annually paid for the special franchises now sought to be further taxed, and which contracts have been fully performed by the railway companies. Under the settled law of the state, these contracts constitute irrevocable agreements which the legislature itself cannot annul, even under the reserved power to alter or amend charters. *People* v. *O'Brien*, 111 N. Y. 1, 36. And it has also long been the settled law of the state, in the light of which the agreements clearly were made, that an ordinance duly accepted constituted a contract, and that, if it provided for a fixed tax, such as a license fee, the amount thereof could not be increased by the city without impairing the obligation of the contract, although the ordinance might not have stipulated that the particular tax provided for should not be increased. *Mayor* v. *Second Av. R. R.*, 32 N. Y. 261, 271; *Mayor* v. *Third Avenue Railroad Co.*, 33 N. Y. 42.

In the first of these two cases, the ordinance granting the franchise did not exact any compensation, although it imposed certain obligations on the grantee and was silent on the subject of taxation. Subsequently, the common council sought to impose a license fee of fifty dollars annually for each car run, and the question was whether this could be done without impairing the obligation of the contract embodied in the grant of the franchise. Among other things, the Court of Appeals, by Brown J., said (p. 274):

> "So with this ordinance, call what it requires by the name of license or certificate of payment, or any-

thing else, its primary, and indeed, only purpose is to take from the company, under coercion of the penalty which it imposes, the sum of fifty dollars annually for each car run upon the road for the benefit of the city. The certificate which the company is to receive upon payment being made, is called a license in the ordinance. A license to do what the ordinance does not say—and indeed it could not, with truth, say—a license or permission to employ the car in the transportation of passengers upon the road, for the absolute right to do that which had been not only acquired, but positively enjoined upon the company by the stipulations of the grant of the 15th of December, 1852. It is in vain, therefore, to speak of it or to treat it as a license, or a regulation of police. It is the imposition of an annual tax upon the company in derogation of its rights of property, and on that account is unlawful and void."

In the *Third Avenue R. R.* case, the same ordinance sought to increase the amount provided for in the contract under which the railroad company acquired its franchise. The opinion of the court was delivered by Porter, J., as follows (33 N. Y. 42):

"Our decision at the March Term in the case of the *Mayor, &c., New York*, v. *Second Avenue Rail Road Company*, substantially disposes of this question. (32 N. Y., 5 Tiffany, 261.) The increase of the sum payable as a license fee under the ordinance of 1858, beyond the amount provided for by the stipulations in the contract of 1853, so far as it was in derogation of the defendant's rights, must be deemed illegal and void. It was not the exercise of the power of municipal regulation reserved by the terms of the grant, and which the common council had no authority to alienate; but it was simply an attempt by one

of the parties to a contract to revoke a provision inserted for the benefit of the other.

"The common council could not lawfully impose a penalty for non-compliance with an illegal exaction."

These two cases established the doctrine in New York that a city could not exact additional compensation or payments by subsequent ordinance, beyond what was reserved or stipulated for at the time, without violating the contract rights of the grantee of a franchise, and in this respect the cases have not been overruled in that state, and have been frequently cited in other jurisdictions. *E. g. Stein* v. *Mayor, etc., of Mobile*, 49 Alabama, 362, 369; *City of Los Angeles* v. *L. A. C. W. Co.*, 61 California, 65, 68; the latter case being cited with approval by this court in *Los Angeles* v. *Los Angeles City Water Co.*, 177 U. S. 558, 578.

In all the statutes from 1884, the fundamental feature has been that franchises to use the streets of a city could be granted only upon the express condition of an annual payment of a percentage of gross receipts. The terms of the ordinances remove all possibility of doubt that the city understood that it was contracting for the annual payment of a fixed amount or percentage of gross receipts. If the legislature had itself granted the franchise by a statute providing that the grant was upon condition that the grantee should pay a fixed amount per annum or a fixed percentage in consideration of the grant, and had required the express acceptance by the grantee of such terms and conditions, no one for a moment would think of suggesting that the statute did not evidence and constitute a valid and binding contract

as between the grantee and the state, or that the contract was not protected against impairment by the Constitution of the United States. As Earl, J., said in *Langdon* v. *Mayor, etc., of City of N. Y.*, 93 N. Y. 129, 157:

> "Whenever legislative acts are in substance contracts between the State and the party who is to derive some right or benefit under them, then such contracts are not the less under the protection of the Federal Constitution, because they have assumed the form of acts."

If the ordinary rules which govern the interpretation of contracts are to apply, it is submitted that a stipulation in a contract between a city and a railway company, entered into pursuant to the express provisions of a statute and providing for the payment of a fixed annual sum or tax, necessarily implies that that fixed annual sum or tax cannot be increased by the state or the city without impairing the contract. If, for example, a lease provided for the payment of a fixed annual rent, it would be preposterous to suggest that the lessor could increase that rent by any form of exaction without impairing the contract. And if a party contracting with a city agrees to pay a fixed sum per annum "in the nature of a tax," in consideration of the grant of the right or privilege to use certain streets, the state or city ought not to be at liberty thereafter to increase that tax on its own grant and thus impair its own contract and make it more burdensome than it saw fit to make it at the time it was entered into.

It is, of course, elementary that what is implied is as much a part of a contract or statute as what is expressed; and, therefore, that whatever by correct legal

reasoning is fairly contemplated by the parties and fairly within the obligation assumed on the one side or the other is as binding and effectual as if stated in express language. *United States* v. *Babbit*, 1 Black, 55, 61. Nowhere is the doctrine more emphatically stated than in the New York cases. Thus, in *Jones* v. *Kent*, 80 N. Y. 585, 588, Danforth, J., delivering the opinion of the court, said:

> "The answer must be found in the written agreements interpreted in the light of the cardinal rule that a writing contains all that may fairly be implied from it. (*Potter* v. *The Ontario and Livingston Mutual Ins. Co.*, 5 Hill, 147; *Booth et al.* v. *C. R. Mill*, 74 N. Y. 15.)"

Parties entering into a written contract are not called upon to insert prohibitive words for the purpose of preventing what would impair or nullify its stipulations, any more than they are required to insert in a contract an express stipulation that neither party shall violate its terms and conditions or make it more burdensome to the other party. It is never necessary to express in terms what would fairly be the legal inference or conclusion. The subject of violation of the terms is mentioned only where it is necessary to provide for stipulated damages in case of breach. Indeed, it is a cardinal rule in drafting contracts and statutes not to express what is implied in law. *Expressio eorum quæ tacite insunt nihil operatur.* Broom's Legal Maxims (8th Am. ed.), p. 669. The expression of what is implied in law is denominated by Lord Bacon *clausula inutilis.* See also 2 Parsons on Contracts (9th ed.), * 514.

In the cases at bar, the legislation, as we have seen, required that the grant of franchises by the cities of the state should be upon condition that the grantee should pay fixed amounts and percentages, and every one of the ordinances specifically provided for such payment and obligated the company in each case to make it, and the companies have assumed the obligation. The above quoted contemporaneous interpretation by Governor Cleveland justifies the presumption that the parties understood that they were contracting to pay an annual tax upon the special franchises being granted. The legislature contemplated, and the parties clearly understood, that these annual payments were to be part of the subject-matter of the contract or agreement, and, if a contract or agreement was necessary and was exacted, then its terms and conditions cannot be varied.

The general rule undoubtedly is that contracts with states or municipalities are to be so construed that an exemption from future taxation or regulation of rates is not to be implied unless in reason necessary to give effect to the agreement or, as it has been authoritatively stated, "unless within the express letter or the *necessary scope* of the exempting clause." *Ford* v. *Delta and Pine Land Company*, 164 U. S. 662, 666. But if a contract specifically provides for a fixed tax or rate, is it not implied in law that such express stipulation is exclusive and covers the present and future, as fully as if the contract expressly so recited? Has it ever been seriously intimated that, where a particular tax has been the subject-matter of a valid contract fixing it, such tax could be increased without impairing the contract? Has it ever been

held that where a charter provides for the right to collect an agreed and fixed amount of toll or rate, the legislature or city could modify that provision at will and change the toll or rate? If such decisions exist, they have not been found by counsel.

It may be useful at this point to refer to some of the rules which protect parties contracting in good faith with states or municipalities. In the famous case of *Huidekoper's Lessee* v. *Douglass*, 3 Cranch, 1, 70–71, decided at the February Term, 1805, Chief Justice Marshall used the following language.

> "This is a contract; and although a state is a party, it ought to be construed according to those well established principles which regulate contracts generally.
>
> "The state is in the situation of a person who holds forth to the world the conditions on which he is willing to sell his property.
>
> "If he should couch his propositions in such ambiguous terms that they might be understood differently, in consequence of which sales were to be made, and the purchase-money paid, he would come with an ill grace into court, to insist on a latent and obscure meaning, which should give him back his property, and permit him to retain the purchase-money. All those principles of equity, and of fair dealing, which constitute the basis of judicial proceedings, require that courts should lean against such a construction."

And in *Davis* v. *Gray*, 16 Wall. 203, 232, Mr. Justice Swayne speaking for the court, among other things, said:

> "When a State becomes a party to a contract, as in the case before us, the same rules of law are applied to her as to private persons under like circumstances. When she or her representatives are properly brought into the forum of litigation, neither she

nor they can assert any right or immunity as incident to her political sovereignty."

Indeed, we are apt to be misled by overlooking the fact that the rule as to strict construction of charters arose in connection with grants which were donations "flowing from the bounty of the crown." But, as has been frequently pointed out, when the grant is upon valuable consideration, imposing pecuniary and other obligations upon the grantee to which he is bound by a valid contract, good sense and justice require that the grant should be construed according to the rules of legal reasoning which govern all contracts and which the experience and wisdom of generations have shown to be just as between man and man. This is very strongly stated by Mr. Justice Story, dissenting, in the *Charles River Bridge* case, 11 Pet. 420, 597, 611; and see comment on his language in *Hyman* v. *Read*, 13 California, 444, 452. See also the reasoning of Mr. Justice Curtis in *The Richmond, &c. Railroad Co.* v. *The Louisa Railroad Co.*, 13 How. 71, 86. And for over sixty years this rule of construction has been followed in the state of New York. Thus, in the leading case of *Thompson* v. *The People*, 23 Wendell, 537, 580, the following language was used:

> "The charters and franchises of modern times are contracts made for public consideration and advantage. They may occasionally be unwise and injurious, but their general result is most beneficial to the best interests of society. On the faith reposed in them, capital is largely and usefully invested; roads, bridges and canals are constructed; schools, colleges, libraries, hospitals, and other institutions of education or beneficence are founded. The grantees who risk their funds or apply their enterprize and industry

in such investments or undertakings, have, indeed, most commonly, like other persons who make bargains and contracts, their own personal interests in view. They are, therefore, not entitled to claim any special and peculiar favor above other men, in the eye of the law. But they have a right to strict and equal justice. The sovereign authority has no peculiar privileges as against them. They are entitled, on every principle of public policy as well as of natural equity, to have the same general rules of justice applied to their contracts with the state, which regulate contracts and estates on condition as between one private citizen and another. Questions touching franchises are therefore to be examined upon the principles of sound reason, as applied to the settled doctrines of the common law in trusts, covenants and contracts between man and man."

See also *Langdon* v. *Mayor, etc., of City of N. Y.*, 93 N. Y. 129, 148, 152.

Returning to the facts before the court, we find in each case a grant made by the state itself or the city under express legislative authority providing for payments in consideration of the franchise, right, or privilege to use the streets of the city, and we find the state seeking to increase these stipulated amounts by the subsequent imposition of additional taxation.

Of course, the mere fact that the original statute or contract does not call a fixed annual payment or exaction a tax can make no difference. The substance and not the nomenclature determines the legal nature of the payment to be made. If the statute in the present case had called the obligation a tax, it would not have constituted it such, had its nature been otherwise. The name, in a word, is wholly immaterial. *People ex rel. W. U. T. Co.* v. *Dolan*, 126 N. Y. 166, 175. Calling it a

tax would not make it such any more than arbitrarily giving it any other name could change its character. Governor Cleveland called the payments taxes; Governor Roosevelt, fifteen years later, called them "existing taxes"; the legislature subsequently characterized them as "in the nature of a tax." If, for example, the exaction by the state of New York of a percentage of gross receipts from railroad corporations for the franchise to be a corporation or to carry on a particular business be a tax upon such franchise, and no one has ever questioned that it is essentially a tax, it is difficult to perceive why the exaction of a similar percentage from those to whom the state or city grants a local franchise, right, or privilege to use particular streets for railway purposes is not likewise a tax. Nor does the fact that a specific sum or percentage is payable into the sinking fund of a city change its nature as a tax. *Pacific Railroad Company* v. *Maguire*, 20 Wall. 36, 44.

There can be no reasonable doubt that, according to common understanding, an annual sum paid or exacted for a franchise, right, or privilege, such as the right to use the streets of a city or the highways of a town, is essentially a tax, and that this is particularly true in the state of New York. Thus, in *Heerwagen* v. *Crosstown St. Ry. Co.*, 179 N. Y. 99, 104, the court, discussing the present statute and referring to the same class of payments as are being made by the plaintiffs in error, said:

> "In the first place both in statutes and in judicial decisions the term 'tax' is frequently used in a much more comprehensive sense than that which we have stated to be its accurate meaning. It is not used so

broadly as to include the revenue from private property which the state or one of its political divisions may hold for emolument the same as other owners; but it certainly is used to comprehend exactions for the privilege of exercising franchise rights which latter are often, especially in the case of foreign corporations, merely the consideration received for privileges which the state is at liberty to grant or to withhold at pleasure."

In the same case below (90 App. Div. 275, 283–284), Mr. Justice Spring said:

"The corporation paying had no voice in fixing the sum to be paid. It was an annually recurring charge which savored of a tax. It was fixed by a statute and was an exaction of money upon the earning capacity of the property and the defendant contributed it toward the expenses of the municipality. . . . While it was a free bidder in the sense that it was not required to bid, yet if it constructed its railroad at all it must pay an annual charge to the city for so doing. To that extent the payment was a 'forced contribution.' . . .

"The fact that the money paid is remuneration for something acquired is not incompatible with the proposition that it also may be 'in the nature of a tax.' So far as it is the purchase price denuded of any of the other attributes which the statute imports into it we may say it is not in the nature of a tax. When, however, we come to consider that the payments must be made to enable the defendent to do business, that it must be paid in yearly percentages of its revenues and goes to swell the annual budget of the city, we conclude that it has the *indicia* of a tax, even though it be also a compensation for property acquired. The tax which a stock corporation pays for the privilege of doing business is based upon its capital stock and is the compensation which it pays for that privilege. It has the attribute of a tax as well as that of compensation. Whatever

> may be the condition imposed for the privilege of doing business—whether designated a bonus, compensation, a license fee or in name a tax—it is in effect a tax."

See also *State ex rel.* v. *Ashbrook*, 154 Missouri, 375, 385.

The primary definition of a "toll" by Webster, is—

> "A tax paid for some liberty or privilege, particularly for the privilege of passing over a bridge or on a highway, or for that of vending goods in a fair, market, or the like."

This definition was quoted with approval by the New York Court of Appeals in the case of *Pennsylvania Coal Co.* v. *Delaware, &c. Canal Co.*, 3 Abbott (N. Y. App.), 470, at page 477. So also in the Century Dictionary, the primary meaning of "toll" is stated as follows:

> "A tax paid, or duty imposed, for some use or privilege or other reasonable consideration."

In Cooley's Taxation, the learned author uses the following language (3d ed., pp. 110–111):

> "Where a certain sum is specified for a certain percentage upon valuation, or upon receipts or acquisitions in any form, this is in the nature of a commutation of taxes, the state agreeing that the sum named is, under the circumstances, a fair equivalent for what the customary taxes would be, or the fair proportion which the person bargained with ought to pay, and the power thus to commute, though liable to abuse, is undoubted. And this rule applies when the bonus is paid for complete future exemption, to the same extent and on the same reasons as when the commutation is for an annual payment."

And the same author in his work on Constitutional Limitations (7th ed., p. 713) says:

> "The license fees which are sometimes required to be paid by those who follow particular employments are, when imposed for the purposes of revenue, taxes; the tolls upon persons or property, for making use of the works of public improvement owned and controlled by the State, are a species of tax; stamp duties when imposed are taxes; and it is not uncommon, as we have already stated, to require that corporations shall pay a certain sum annually, assessed according to the amount or value of their capital stock, or some other standard; this mode being regarded by the State as most convenient and suitable for the taxation of such organizations."

It has uniformly been regarded in New York and in all other states that the payment imposed upon corporations of a fixed annual percentage on their gross or net receipts or earnings for the privilege of exercising franchises, is essentially a tax. The statutes, it is true, have generally denominated the imposition as a tax, especially where used in connection with the exemption from other forms of taxation, but, to repeat, the language used could not make that a tax which in itself was not such. Thus, in *Maine* v. *Grand Trunk R'y Co.*, 142 U. S. 217, 227, frequently cited and followed in the state courts, particularly in New York, Mr. Justice Field, speaking of a provision requiring railroad corporations to pay a percentage upon their gross receipts, among other things, said:

> "The tax, for the collection of which this action is brought, is an excise tax upon the defendant corporation for the privilege of exercising its franchises within the State of Maine. It is so declared in the statute which imposes it; and that a tax of this character is within the power of the State to levy there can be no question."

In *Union Bank* v. *The State*, 9 Yerg. 490, and *Attorney General* v. *Bank of Charlotte*, 4 Jones Eq. (N. Car.) 287, the exaction of a percentage of gross receipts was not specifically called a tax in the statute itself. Both of these cases are in point upon two grounds: First, because the percentage is not characterized as a tax, and, secondly, because the statute is silent as to exemption from additional or different taxation Although these two statutory provisions in Tennessee and North Carolina, respectively, have been the subject of discussion in numerous cases, it has never occurred to any one to suggest or contend that the percentages to be paid were not in their essence taxes. They have always been treated as such without question. The controversies arising out of them have not been as to whether they were taxes, but whether the specific tax thus provided for in the charters implied an exemption from *other* forms of taxation; and it has never been held that the *specific* tax so provided for could be increased by subsequent legislation. Although charters frequently provide that a certain tax is *in lieu of other taxes*, we recall no instance where it has been thought necessary to state that a *specific tax* stipulated for should not be subject to increase. Obviously, if subject to increase, there would be no use or sense in making it a part of any charter or contract.

It may be emphasized by repetition that, in the act of 1884, the provision for sale of the franchise in section 7 was distinct and separate from the provision for a percentage of three and five per cent. on the gross receipts

in section 8; that this distinction was preserved in the first act of 1886 (ch. 65) in that section 7 of the act of 1884 was expressly repealed while section 8, covering the percentage payments, was preserved; that in the second amendatory act of 1886 (ch. 642) it was provided that the amount bid at the sale was in no way to release the company from the condition to pay the percentage on the gross receipts provided for in section 8 of the act of 1884, and that through all the subsequent legislation the exaction of the fixed three and five per cent. on the gross receipts has been uniformly preserved. Thus, section 93, providing for the sale at auction to the bidder of the highest percentage of gross receipts, is no longer applicable to New York City (Greater New York Charter, sec. 77, L. 1897, ch. 378, as amended by L. 1901, ch. 466), but section 95 of the Railroad Law, being originally section 8 of the act of 1884, still remains applicable to franchises in the city granted since 1897.

The word "rental" appears for the first time in chapter 642 of the laws of 1886, and is then used in the phrase "rental or percentage of gross earnings agreed upon." Although taken by itself, this phrase might indicate that the legislature was expressing alternative and equivalent senses of the same thing, nevertheless, the different terms undoubtedly referred to different things, in view of the fact that they had been treated as such in all the legislation and are still treated as distinct and separate. "Or" in such a case frequently means "and." In *United States* v. *Fisk*, 3 Wall. 445, 447, Mr. Justice Grier, delivering the opinion of the court, said:

"In order to do this, courts are often compelled

to construe '*or*' as meaning '*and*,' and again '*and*' as meaning '*or*.'"

So, too, in *People ex rel. M. G. Co.* v. *Rice*, 138 N. Y. 151, 156, O'Brien, J., delivering the opinion of the court, said:

> "The words 'and' and 'or,' when used in a statute, are convertible as the sense may require. The substitution of the one for the other is frequently resorted to in the interpretation of statutes when the evident intention of the lawmakers requires it. (Sedgwick on Stat. & Con. Law [2d ed.], Pomeroy's note, 371; Hardcastle's Con., etc., of Stat. Law, appendix, 575, and cases cited; Wilberforce Statute Law, 130.)"

The contemporaneous and subsequent practical interpretation by the executive department of the state from Governor Cleveland in 1884 to Governor Roosevelt in 1899, by the legislature itself in the present statute, and by the highest court of the state in the *Heeramgen* case, *supra*, 179 N. Y. 99, most persuasively show that it was the intent of the legislature to provide a tax and nothing else, and that the payments are in fact existing taxes, as Governors Cleveland and Roosevelt called them, or "in the nature of a tax," as the legislature itself denominated them.

As to the force of the legislative characterization of such payments as "in the nature of a tax," the familiar language of Chief Justice Marshall in *Alexander* v. *Mayor*, 5 Cranch, 1, 8, will be recalled, viz.,

> "Consequently, if a subsequent act on the same subject affords complete demonstration of the legislative sense of its own language, the rule which has been stated, requiring that the subsequent should be incorporated into the foregoing act, is a direction to courts in expounding the provisions of the law."

And in the subsequent case of *The United States* v. *Freeman*, 3 How. 556, 564, the court said:

> "The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law. Doug. 30; 2 Term Rep. 387, 586; 4 Maule & Selw. 210. If a thing contained in a subsequent statute, be within the reason of a former statute, it shall be taken to be within the meaning of that statute; Lord Raym. 1028; and if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute. *Morris* v. *Mellin*, 6 Barn. & Cress. 454; 7 Barn. & Cress. 99. Wherever any words of a statute are doubtful or obscure, the intention of the legislature is to be resorted to, in order to find the meaning of the words. *Wimbish* v. *Tailbois*, Plowd. 57."

See also *Stockdale* v. *Insurance Companies*, 20 Wall. 323, 331; *Cope* v. *Cope*, 137 U. S. 682, 688; *The People* v. *Benton*, 29 N. Y. 534, 537; *Smith* v. *The People*, 47 N. Y. 330, 339; *People ex rel. West. F. I. Co.* v. *Davenport*, 91 N. Y. 574, 591.

The contemporaneous practical interpretation by Governor Cleveland in 1884, in the light of which the contracts were made, supplemented as it is by the declarations of Governor Roosevelt in 1899, are likewise entitled to almost the force of law. *Citizens' Bank* vs. *Parker*, 192 U. S., 73, 81; *Potter* v. *Hall*, 189 U. S. 292, 298, 300; *Southern Pacific Railroad Co.* v. *Bell*, 183 U. S. 675, 682, 685; *Hewitt* v. *Schultz*, 180 U. S. 139, 156, 157;

United States v. *Pugh*, 99 U. S. 265, 269. See also *Easton* v. *Pickersgill*, 55 N. Y. 310; *People ex rel. Williams* v. *Dayton*, 55 N. Y. 367; *Power* v. *Village of Athens*, 99 N. Y. 592, 602; *Matter of W. S. A. & P. R. R. Co.*, 115 N. Y. 442, 447; *Jennings* v. *Van Schaick*, 108 N. Y. 530, 533; *Babbage* v. *Powers*, 130 N. Y. 281, 291; Lewis' Sutherland Statutory Construction, sec. 474.

It is, therefore, submitted that the annual payments prescribed in the statutes and stipulated for in the several contracts between the city of New York and the plaintiffs in error are taxes, and were understood by the parties to be taxes, notwithstanding the fact that the statutes or ordinances do not characterize them as tax payments.

What, then, is the true construction of a contract which specifically covers the subject of taxes and provides for a definite and fixed annual payment thereof as one of the terms of the grant of a franchise, right, or privilege to use the streets of a city? Is it, or is it not, to be fairly implied from, or reasonably within the necessary scope of such a stipulation, that the payments stipulated for are not to be increased?

In considering such contracts as are now before the court, it will be of aid to bear in mind the language of Mr. Justice Miller in *New Jersey* v. *Yard*, 95 U. S. 104, 115–116, as indicating the legal reasoning to be applied, viz.,

> "There was a well-understood subject of contract. The corporation wished authority to build a branch road or roads, with favorable route, and power to acquire right of way; and the State wished the vexed

question of the right to tax the corporation to be settled. For the company denied the right of the State to tax them under their charter, until the road paid them a net income of seven per cent. per annum on its cost.

"The legislature said, If you will consent to pay the one-half of one per cent. tax as originally agreed, and commence to do this within one year from the time the road shall be open and in use to Phillipsburgh, we will authorize an increase of ten millions of your capital stock and the franchises you seek as to the branch roads, and will agree that the tax shall be fixed at one-half of one per cent. Here was a subject of disagreement adjusted, additional rights granted, and the tax fixed, both as to its rate and the time of commencement.

"Can it be believed that it was intended by either party to this contract that, after it was signed by both parties, one was bound for ever, and the other only for a day? That it was intended to be a part of the contract that the State of New Jersey was, at her option, to be bound or not? That there was implied in it, when it was offered to the acceptance of the company, the right on the part of the legislature to alter or amend it at pleasure?"

As is well known, the leading authority in this country upon the point that, where the charter of a corporation is silent upon the subject of taxation, a subsequent tax may be levied upon its franchise, is *Providence Bank* v. *Billings and Pittman*, 4 Pet. 514, 560, and all the learning may well be said to hang upon the lucid opinion of Chief Justice Marshall in that case. Among other things, he said:

"It has been settled that a contract entered into between a state and an individual is as fully protected

by the tenth section of the first article of the constitution as a contract between two individuals, and it is not denied that a charter incorporating a bank is a contract. Is this contract impaired by taxing the banks of the state? This question is to be answered by the charter itself.

"It contains no stipulation promising exemption from taxation, The state, then has made no express contract which has been impaired by the act of which the plaintiffs complain. *No words have been found in the charter, which, in themselves, would justify the opinion that the power of taxation was in the view of either of the parties; and that an exemption of it was intended, though not expressed.* The plaintiffs find great difficulty in showing that the charter contains a promise, either express or implied, not to tax the bank."

It was thus clearly indicated that the true inquiry in all such cases as those at bar is whether the language used "would justify the opinion that the power of taxation was in the view of either of the parties, and that an exemption of it was intended, though not expressed." Had the charter of the Providence Bank in that case provided for a specific tax upon its franchise and had the bank entered into a contract with the state or a municipality binding it to pay a *franchise* tax among other onerous conditions, is it not proper to assume that the decision of the court would have been that any additional *franchise* tax could not be imposed without impairing the obligation of the contract or changing the necessary scope and legal effect of the provision, although, of course, this would not have precluded any of the other forms of taxation discussed above?

The first case in this court upon the question of the legal effect of an agreement to pay a fixed sum for a franchise is *Gordon* v. *Appeal Tax Court*, 3 How. 133, where, among other things, it was held that a franchise from the legislature cannot subsequently be taxed, if a price has been paid for it, which the legislature has accepted. So far as what is believed to be an exhaustive and accurate examination has disclosed, this case has not been overruled or limited by this court *upon this point*, and it is, therefore, still authority. The language of the opinion of the court, in discussing this branch of the case, which was necessary to a decision of part of the actual controversy before it, is strikingly applicable to all the cases at bar, as will be seen by the following extract, viz. (pp. 145–146).

> "A round sum, or an annual charge, with or without reference to capital stock, may be asked by a legislature for such a franchise. It may be more convenient to the banks to have such a consideration or bonus distributed through the years of their corporate existence, than to pay its equivalent in advance. This option was given to the old banks. Being so given, it is conclusive that the legislature intended the annual tax or charge upon the capital stocks of the banks to be the bonus or price, or part of the price as to some of them, that they were to pay for the prolongation of their franchise of banking. When the banks accepted the acts, by choosing to pay the annual charge instead of the stipulated alternative, it is plain that they thought so too, and that they understood in that way the contract between themselves and the state. Either was a condition to be accepted and complied with before the charters were to be extended. Such a contract is a

> limitation upon the taxing power of the legislature making it, and upon succeeding legislatures, to impose any further tax upon the franchise. But why, when bought, as it becomes property, may it not be taxed, as land is taxed which has been bought from the state, was repeatedly asked in the course of the argument? The reason is, that every one buys land, subject in his own apprehension to the great law of necessity, that we must contribute from it and all of our property something to maintain the state. But a franchise for banking, when bought, the price is paid for the use of the privilege whilst it lasts, and any tax upon it would substantially be an addition to the price."

It was, however, contended in the courts below on behalf of the state in the cases at bar, that the *Gordon* case had not only been limited but expressly disapproved and overruled by this court on the point now involved and in support of this statement the following cases were cited, viz., *New Orleans City &c. Co.* v. *New Orleans*, 143 U. S. 192, 195; *State Bank of Ohio* v. *Knoop*, 16 How. 369, 386, 401; *People* v. *The Commissioners*, 4 Wall. 244, 259; *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 446; *Farrington* v. *Tennessee*, 95 U. S. 679, 690, 694; *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, 328. There can be no doubt that the learned referee (see Metropolitan rec., pp. 460–461) assumed this to be so and, therefore, disregarded the authority of the *Gordon* case. Yet, an examination of the cases cited as disapproving and overruling it will show that this assumption was entirely erroneous.

The first case cited is *New Orleans City &c. Co.* v. *New Orleans*, 143 U. S. 192, 195, where the

question presented for decision was whether the imposition of a license fee or occupation tax upon the business of transporting passengers for hire impaired the obligation of a contract between a city and a railway company by which the city had sold to the railway company for $650,000 the right of way and franchise to run a railroad over certain streets in the city of New Orleans, and it was held that such payment for the right of way and franchise did not preclude the state or city from imposing a license fee or occupation tax upon the business of transporting passengers for hire. No question was involved in the case as to the power of the city, after having exacted $650,000 in cash for the right of way and franchise, to have imposed a tax or additional burden on such right of way or franchise. So, in the cases at bar, it is not contended that the state could not impose a license fee or excise tax upon the occupation or business of transporting passengers for hire applicable to all similarly situated and engaged in the same business. As matter of fact, the state of New York for many years has been exacting what is substantially a license fee or occupation tax on the business of transporting passengers, and it has never occurred to any one to challenge the tax as a tax upon the special franchises owned by the plaintiffs in error and other street surface railway companies. A street surface railway company would be subject to such a tax whether or not it owned a special franchise in the streets, and an exemption of such a special franchise from taxation would not imply an exemption from an occupation tax.

The next case cited by the state was *State Bank of Ohio* v. *Knoop*, 16 How. 369. A perusal of the opinion of the court will show that the *Gordon* case was cited (p. 386) as *holding* "that the charter of a bank is a franchise, which is not taxable as such, if a price has been paid for it, which the legislature accepted. But that the corporate property of the bank, being separable from the franchise, may be taxed, unless there is a special agreement to the contrary." It was in the dissenting opinion of Mr. Justice Catron alone, speaking only for himself, that any suggestion was made in limitation of the *Gordon* case. Another case cited below to the same effect was *People* v. *The Commissioners*, 4 Wall. 244, 259, which arose under the act of congress of June 3, 1864, 13 Stat. 99, regulating national banks and the taxation of their shares. The *Gordon* case was cited by Mr. Justice Nelson only for the purpose of showing that it had no application whatever to the point then being considered and decided. *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 446, was another case cited as disapproving and overruling the *Gordon* case. As matter of fact, the court cited it as having "*decided* that the charter of a bank is a franchise, which is not taxable as such, if a price has been paid for it, which the legislature has accepted, with a declaration that it was to be in lieu of all other taxation." There is not one word in the opinion which in any way limits or challenges the correctness of the *Gordon* case. The next case cited below was *Farrington* v. *Tennessee*, 95 U. S. 679, where the court held that the charter of a bank which provided that the bank "shall pay to the

state an annual tax of one-half of one per cent. on each share of the capital stock subscribed, which shall be in lieu of all other taxes," was a contract, the obligation of which would be impaired by a subsequent revenue law imposing additional taxes upon the shares of stock in the hands of the stockholders. The *Gordon* case was cited in the opinion of the court as conclusive upon the case then in hand, and the only suggestion in limitation or disapproval of the prior case was in the dissenting opinion of Mr. Justice Strong, which, however, in no way bears upon the point now being considered. The last case cited below as disapproving and overruling the *Gordon* case was *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, 328. In that case, the question presented was the right of a state reasonably to limit the amount of charges of a railroad for transportation of persons or property within its jurisdiction, and the *Gordon* case was cited as instructive only in that the specific subject of exemption from taxation had been included in the Maryland statute and not left to implication. There is not one word in the opinion of the court or in the dissenting opinions of Mr. Justice Harlan and Mr. Justice Field which in the remotest degree supports the suggestion that the *Gordon* case was being criticized or disapproved.

It is, therefore, apparent, from this review of the cases cited and relied upon in the courts below as having disapproved and overruled the *Gordon* case, that quite the contrary is the fact. Indeed, had the citations of the *Gordon* case by this court been examined, it would readily

have been seen that, although the case had been distinguished and limited, it had never been criticized upon the points now involved, and that this court had recognized it as authority for the point actually decided. The difference between distinguishing and overruling a case is generally considered to be as broad as a gulf.

But, as the *Gordon* case will undoubtedly be the subject of much discussion and consideration in the cases at bar, it may save labor if we pause to examine briefly every other citation of the case in this court. This examination will confirm the statement that the case has never been overruled upon the point of the validity and legal effect of a contract providing for the payment of a round sum or annual percentage in consideration of the grant of a franchise.

In *The West River Bridge Company* v. *Dix*, 6 How. 507, 542, Mr. Justice Woodbury, delivering a concurring opinion, cited the *Gordon* case in support of the proposition that taxes may be imposed on franchises "as well as all other property, though coming by grant from the state, and may be done without violating the obligation of the contract, *when there is no bonus paid* or stipulation made in the charter not to tax it." And delivering the opinion in *Planters' Bank* v. *Sharp*, 6 How. 301, 332, Mr. Justice Woodbury, speaking for the court, again cited it to the proposition that "if the state expressly engage in a grant . . . that corporate property and franchises shall be exempt, and they are then taxed," the obligation of the contract is impaired. In *Ohio Life Insurance and Trust Company* v. *Debolt*,

16 How. 416, 429, Chief Justice Taney, announcing the judgment of the court in an opinion concurred in by Mr. Justice Grier, cited the *Gordon* case as reaffirming the doctrine of the earlier cases, that the legislature has power to bind the state by contract. In *Home of the Friendless* v. *Rouse*, 8 Wall. 430, 438, Mr. Justice Davis, delivering the opinion of the court, cited the *Gordon* case to the proposition that the state may by contract, based on a consideration, exempt a corporation from taxation for a specified time, or permanently, and that the exemption is presumed to be upon sufficient consideration and binds the state if the charter containing it is accepted. In *Salt Company* v. *East Saginaw*, 13 Wall. 373, 376, Mr. Justice Bradley, speaking for the court, referred to the *Gordon* case as an instance of this court upholding the power of a state legislature to make a contract exempting certain property from taxation. In *Erie Railway Company* v. *Pennsylvania*, 21 Wall. 492, 498, it is cited by Mr. Justice Hunt, delivering the opinion of the court, as authority for the proposition that a state may make a valid contract that a corporation or its property shall be exempt from, or subject to a limited, taxation. In *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 664–665, Mr. Justice Harlan cited the *Gordon* case as holding that "an exemption from taxation, for a valuable consideration at the time advanced, or for services to be thereafter performed, constitutes a contract within the meaning of the Constitution." And Mr. Justice White quoted this passage in the dissenting opinion in *Freeport Water Company* v. *Freeport City*, 180 U. S. 587, 608.

In *Shelby County* v. *Union &c. Bank*, 161 U. S. 149, 159, Mr. Justice Peckham, delivering the opinion of the court in the series of Tennessee bank cases then presented for decision, used the following language:

> "Giving to the *Gordon case* the full weight of *authority for the point actually decided*, it does not hold that language, such as we have in the case under consideration, operates to exempt both the capital stock of the corporation and the shares of stock in the hands of its shareholders from all taxation beyond that mentioned in the charter, and we are entirely unwilling to unnecessarily extend the authority of that case so as to cover the question here. Long after that case was decided this court in many cases, notably that of *Van Allen* v. *Assessors*, 3 Wall. 573, and *People* v. *Commissioners*, 4 Wall. 244, recognized the separate and distinct character of the two properties, the capital stock and the shares thereof in the hands of individual shareholders, and such seprate property in our opinion is strong proof of the limitation of the exemption to the property which is taxed."

In *Pearsall* v. *Great Northern Railway*, 161 U. S. 646 662, Mr. Justice Brown, speaking for the court, after quoting from the case of *State Bank of Ohio* v. *Knoop*, *supra*, to the effect that "the specific tax agreed to be paid . . . cannot, without its consent, become a subject for legislative action" referred to the *Gordon* case as "to the same effect." In *Grand Lodge* v. *New Orleans*, 166 U. S. 143, 146, the *Gordon* case is cited in the opinion of the court to the effect that a valid charter exemption from taxation is beyond the power of the legislature to abrogate. And, finally, in *Citizens' Bank*

v. *Parker*, 192 U. S. 73, 90, Mr. Justice Brewer, in the dissenting opinion, quoted from the *Gordon* case to show the difference between property in a franchise for banking and property in the banking capital, as constituting distinct and separate objects of taxation.

The question of the legal effect of a provision in a charter for an annual percentage payment arose as early as 1836 in the case of *Union Bank* v. *The State*, 9 Yerg. 490. It was then held that such a provision in the charter of a bank by which it agreed "to pay to the state annually, the one half of one per cent. on the amount of capital stock paid in by the stockholders, other than the state," constituted a contract that the bank should enjoy the privileges conferred, and that a law imposing an additional burden upon the capital stock of the institution impaired the contract and was, therefore, unconstitutional. This case is referred to by Mr. Justice Swayne, delivering the opinion of the court in *Farrington* v. *Tennessee*, 95 U. S. 679, 689, as "a case marked by eminent judicial ability and careful thought." The *Union Bank* case has never been limited or overruled upon the point involved in the cases at bar, although in other respects, it has been qualified, if not overruled. It is still authority in Tennessee for the proposition that where a fixed and specific tax has been stipulated for and agreed upon, *that particular tax* may not be increased by subsequent legislation, although such particular tax does not prevent the imposition of *other* taxes. The reasoning of the Tennessee Supreme Court is so true and clear

that it justifies an extended extract from the opinion, viz. (pp. 495–498),

"In the case of the *Providence Bank* vs. *Billings and Pittman*, 4 Peters, 514, it is determined by the supreme court of the United States, that a State has the power to tax all monied corporations which have been chartered by her laws, and that a relinquishment of this power is never to be assumed, unless the charter contain a stipulation exempting from taxation, or words which in themselves would justify the opinion, that the power of taxation was in the view of the parties, and that an exemption was intended, though not expressed. This exemption, it is argued, is found in the eleventh section of the act incorporating the Union Bank, by which the bank agrees, in consideration of the privileges granted by the charter, to pay to the State annually, one half of one per cent. on the amount of the capital stock paid in by the stockholders. This, it is said, is the tax to be paid by the bank to the State by express contract, and that being thus taxed, no law imposing additional burthens on the institution can be considered as having any validity. The weight of this argument is felt, and is sought to be obviated by insisting that the one half of one per cent. is paid in consideration of the privileges granted by the charter, and is not to be considered as a relinquishment of the right on the part of the State to impose additional taxation on the property of the bank of which the capital stock forms a portion. It is unquestionably true, that the payment of one half of one per cent. on the capital stock is in consideration of the privileges granted by the charter, and does not exempt from taxation any property of the bank not necessarily included in and forming a portion of those privileges, and without which they could not possibly be enjoyed. What are the privileges granted? Among others, the right to use the capital

stock of the institution for all legitimate banking purposes. This is the end and design of the act of incorporation, the privileges for which the one half of one per cent. was contracted to be paid, and out of which the fund for so doing was to be raised. How can the privilege of banking, which is given by the charter, be exercised without a use of the capital stock of the institution? Can bills or notes be bought or exchange made without money? Surely not. Then when an institution contracts with the State for the right of doing these things, and pays therefor a valuable consideration, does it not necessarily follow, that it has contracted and paid for the use of those means, without which the right would be nugatory. The argument is, you have paid for the privilege of banking, and you cannot be taxed for that, but you have not paid for the privilege of using your money for that purpose, and therefore you shall not do so, without you pay a new consideration. This is something like the reasoning of the learned judge to Shylock, 'you have contracted for your pound of flesh, but see you take no blood.' It surely cannot be necessary to enter into an argument to prove that if a privilege be purchased, every thing absolutely necessary to its enjoyment is also purchased. This is a principle of such every day practice, and so universally admitted, that argument upon it would be a waste of time. . . . Then if the Union Bank in consideration of the payment annually of half of one per cent. on its capital stock, has purchased from the state the privilege of employing it in banking operations, does a law which imposes in addition thereto, an annual tax on the same capital thus employed, impair the obligation of the contract? Most unquestionably it does. The bank has agreed to pay one amount, and the state without its consent has superadded another. Then if the construction sought to be given to the clause of the constitution of the state,

> and the acts of the legislature which have been referred to, be correct, their provisions are in direct violation of the constitution of the United States, and they are so far as they may seek to tax the capital stock of the Bank, null and void."

In *Attorney General* v. *Bank of Charlotte*, 4 Jones Eq. (N. Car.) 287, the charter of a bank provided that "The president or cashier of said bank, shall annually pay into the treasury of the state twelve and a half cents on each share of said capital stock which may have been subscribed for and paid in" (p. 288). Subsequently, the legislature passed an act which provided that "The president and cashier of the several banks in this state, except the Bank of the State of North Carolina, shall annually pay three-fourths of one per cent. into the treasury of the state, on the stock owned by individuals or corporations in the said banks," etc. One of the questions raised and presented for decision was whether the provision in the charter precluded an increased tax upon the same shares, such charter tax being equal to one-fourth of one per cent. upon each share while the subsequent statute equalled three-fourths of one per cent.

In discussing the contract, the court relied upon and followed the *Gordon* case, and the reasoning is likewise singularly applicable to the cases at bar. Thus at pages 293–295, the court used the following language:

> "It is now universally conceded that a grant by the legislature, of a charter, whereby a banking corporation is created, is a contract between the State and the corporation, which the constitution of the United States prohibits the state from violating. The well

known definition of a contract is, that it is an agreement between two or more persons, upon a sufficient consideration to do, or not to do, some particular thing. An analysis of it will show, that it consists of four essential parts, to wit, the parties, the agreement express or implied, the consideration, and the thing to be done or omitted. Of these, the consideration is as important as any other, and cannot be varied by either party without the consent of the other, and an attempt to do so by either party without such consent, would be a violation of the contract, as effectually as would be the breach of it in any other particular. The Legislature has the undoubted right to grant to a number of individuals the franchise of being a corporation, for the purpose of banking, or for any other useful purpose. If the grant be mainly for the benefit of the corporators themselves, the State may demand a price for the franchise, to be paid at once, in a round sum, or annually, during the existence of the corporation, by way of impost or tax. Where the grant of the charter is tendered by the State, and accepted by the individual persons, to whom it is offered, then, the corporation springs into existence, and at the same moment, a contract arises between it and the State, which is protected by the constitution of the United States. If the price or consideration of this contract is stated, in express terms, to be a certain sum, *and no more*, there can be no doubt that the State would be prohibited by the constitution of the United States from demanding anything more for the corporate franchise. Can it make any difference in principle whether words, excluding any addition to the price, be used or not? When a person says that he will take one thousand dollars for a tract of land, does he not necessarily mean that he will take that sum, and that he will not ask any more, and if the offer is accepted, can he demand any

more? No one can hesitate as to the proper answer to be given to this question; and the purchase of a franchise, from the State, when viewed in the light of an executed contract, is precisely analogous. And, accordingly, the Supreme Court of the United States, held, in the case of *Gordon* v. *Appeal Tax Court*, cited by the defendant's counsel, that a stipulated price for the extension, by the Legislature, of a bank charter, without any words of restriction or limitation being used, did exhaust the power of taxation on the franchise during the period of the extension; 3 How. Rep. 133. We admit, that in a portion of the opinion, which we delivered in the case of the *State* v. *Petway*, there is an intimation to the contrary, but it was only an *intimation*, for the decision was put expressly upon another ground, and the decision itself has been very generally admitted, to have been right. If it had been necessary for us, in that case, to determine the question, whether the State had the right to impose a tax upon the franchise of the bank, in addition the price which had been already stipulated to be paid for it, we might, upon further reflection, have discovered that there was an essential difference between taxing land granted or an article of personal property, sold by the State to an individual, and taxing a franchise granted by the State to a corporation, created by the very act of making the grant. The land and chattel were things corporeal, having an existence before the grant or sale, and continuing to exist afterwards in the hands of the grantee or vendee and his assigns, independent of such grant or sale. Government cannot exist and be carried on without raising money from the persons and property of the country for its support, and this must be done by the means of imposts and taxes upon such persons and property. A franchise, unlike land or a personal chattel, has no existence until it is called into being

by the act of the Legislature or sovereign power of the State, and in the very act of granting it to a corporation, created for the very purpose of taking it, a contract is formed between the State and the corporation. An essential part of this contract is, as we have already shown, the consideration or price paid, or agreed to be paid, for the franchise, and that neither party is at liberty to vary without the consent of the other. And this prohibition must continue during the existence of the franchise, because the contract, including the consideration, is an essential part of it, and must be co-exisent with it. But though the Legislature cannot tax the franchise of the bank, they may tax *ad libitum* the dividends or profits of the individual share-holders, and the corporate property of the bank, because these are separable from the franchise, and nothing can exempt them from taxation, unless there be a special agreement to the contrary between the bank and the State. See *Gordon* v. *The Appeal Tax Court*, *ubi supra*, and *Bank of Cape Fear* v. *Edwards*, 5 Ire. Rep. 510."

A similar question was presented for decision in *New Orleans* v. *Southern Bank*, 11 La. Ann. 41, where the city of New Orleans attempted to enforce the payment of an occupation tax under an ordinance of the common council providing that "a tax of five hundred dollars shall be levied annually on the following, viz.: Every bank organized and doing business under the Free Banking Law of this State; approved April 30th, 1853." The thirty-fifth section of the Free Banking Law provided: "That Bankers and Banking Companies, doing business under this Act, shall be taxed upon the capital stock at the same rate as other personal property under the laws of this State," and the

defendant bank claimed that it was thereby exempt from an occupation tax. There were thus presented for decision two questions (1) whether such a provision constituted a contract on the part of the state when duly accepted by a bank, and if so, (2) whether the imposition of an occupation tax amounted to an impairment of the obligation of such contract.

In delivering the opinion of the majority of the court, Merrick, C. J., said (pp. 41–42):

> "The general banking law, approved April 30th, 1853, in regard to the privileges and immunities granted under it, is as much a contract with the individual corporations formed under the Act, as would be a special Act of incorporation containing the like provisions.
>
> "So long as nothing is said in the Act of incorporation on the subject of taxation, that power must be considered as reserved to the Legislature, it being one of the most important rights of sovereignty.
>
> "It must follow that the thirty-fifth section of the Act under consideration, was a useless provision if it were intended to secure to the State right of taxation, for it was not necessary for the State to stipulate for this right with any of her citizens.
>
> "We must therefore conclude, that this section was intended for the security of the capitalist, and an assurance to him that if he invested his money in the banks, under this general banking law, that his stock should be taxed at the same rate as other personal property. It was an assurance that it should not be taxed in any other manner. So far then, this section possesses the force of an obligation binding alike upon the State and all municipal and other corporations deriving their authority from the State."

The court was unanimous in the view that the

provision amounted to a contract, the two dissenting judges thinking it "clear that this section is applicable only to the capital stock—'fonds capital'—and not to the business of the institutions" (p. 43). See also to same effect *State* v. *Southern Bank*, 23 La. Ann. 271, 272; *City of New Orleans* v. *People's Bank of New Orleans*, 32 La. Ann. 82, 83; and the recent case of *Treasurer of New Orleans* v. *Chaffaix*, 106 Louisiana, 250, 255, citing the *Gordon* case.

In *Citizens' St. R. Co.* v. *Common Council*, 125 Michigan, 673, 702, the court, among other things, said:

> "When the city saw fit to make its easements and local taxes the subject of contract, the agreement bound both parties, and there is no reason for requiring the private corporation to live up to every provision of the contract, and permitting the municipal corporation to disregard it at will. Such contract was made, and is as binding as though made by the legislature itself. The railway company has paid the tax stipulated for, and been to a large expense in paving, etc., under the contract. The abolition of a specific tax and the passage of a general tax law has not changed the contract. At least, this was the view we understand to have been taken in the case of *City of Detroit* v. *Detroit City R. Co.*, which we think is conclusive of the question. Cooley Tax'n (2d ed.), 66. That, in the absence of constitutional prohibition, the legislature has unlimited power, does not admit of doubt. See *Atlantic, etc., R. Co.* v. *Le sueur* (Ariz.), 19 Pac. 157, 1 L. R. A. 244. The respondent must be content to measure its city taxes by the terms of its contract."

In *City of Los Angeles* v. *The L. A. C. W. Co.*, 61

California, 65, there had been an agreement between the municipality and a water company (p. 66) "by which, for an annual rent reserved, and other considerations named," the right to sell and distribute water in the municipality was granted to the company, which agreement was ratified by the legislature. After this grant had been accepted and acted on by the company, the municipality attempted by ordinance to impose a license tax on the company for the same privilege of doing business in the municipal limits, but the ordinance was considered by the court to be merely an increase of the amount to be paid for the privileges granted and as such, a violation of the contract and void. The court said (p. 67):

> "The plaintiff had already reserved a sum to be paid by defendant for the privilege of vending water for domestic purposes, and it could not change its contract in the manner proposed. The privileges granted by the lease and the ordinance of 1868 were already vested in the defendant, as strongly as they could be by a license under the ordinance of 1879. A license is a grant of permission or authority. The defendant already had permission and authority granted by ordinance and ratified by the legislature. The city cannot, during the term of the lease, of its own motion, increase the amount to be paid for the privileges granted.
>
> "It is hardly necessary to say that the point made by the appellant, that neither the city nor the legislature can grant or alienate any of the rights of sovereignty, has no application in this case."

This language was approved by the court in banc, and Morrison, C. J., who delivered the opinion, cited

and approved (p. 68) the *Second Avenue* and *Third Avenue* cases, *supra*, and said (p. 69):

> "The principles enunciated in the foregoing cases, are eminently sound and just, and are directly applicable to the case we are now considering. The city of Los Angeles, by its solemn contract, and for various considerations therein stated, gave to the party under whom defendant claims, the privilege of introducing, distributing and selling water to the inhabitants of that city, on certain terms and conditions, which defendant has complied with, and it was not within the power of the city authorities, by ordinance or otherwise, afterward to impose additional burdens as a condition to the exercise of the rights and privileges granted."

This case, together with the language above quoted, was approved by this court in *Los Angeles* v. *Los Angeles City Water Co.*, 177 U. S. 558, 577–578. To the same effect see *City of St. Louis* v. *Western Union Tel. Co.*, 63 Fed. Rep. 68, 70.

In *Los Angeles* v. *S. P. R. R. Co.*, 67 California, 433, 436, the *Los Angeles Water* case is distinguished and the language employed for this purpose brings out sharply the point there decided, namely, that annual payments agreed upon as the consideration of privileges granted cannot be increased under the guise of a license tax. The court said (pp. 436–437):

> "There the plaintiff entered into an agreement with the predecessors in interest of the defendant, by which for an annual rent reserved and other considerations, defendant, the holder of a lease of plaintiff's water-works as assignee, had a right to sell and distribute water for domestic purposes, and to receive the rents and profits to its own use.

"The right to sell water and carry on the business of selling and distributing water for profit was granted by plaintiff, and an ordinance imposing a license tax upon all persons vending water for domestic purposes was held invalid against defendant upon the ground that plaintiff, under its contract, had already reserved a sum to be paid by defendant, for the privilege of vending water for domestic purposes, and could not, during the term of the lease, increase the amount to be paid for the privilege granted.

"The present case differs from that in this—there plaintiff had received a consideration for a *privilege granted*—here no privilege had been granted to carry on a business, and no compensation had been received for any such grant.

"Plaintiff had granted a right of way and conveyed certain property, as any private owner of such property might have done, nothing more.

"This did not, as we think, constitute such an express grant to defendants of the right to operate its road as to exclude it from liability to a license tax in common with others engaged in a like pursuit."

In *Sebastian, Treasurer, &c.* v. *Covington & Cincinnati Bridge Co.*, 21 Ohio St. 451, 459, the charter of the bridge company contained the provision that "one-half the capital stock of the company actually paid in, shall, as soon as the company commences taking tolls, be placed upon the duplicate of the treasurer of Hamilton County, for taxation for all purposes," and this provision was held, in view of the circumstances, to constitute a contract of exemption from general *ad valorem* taxation as to the one-half not required to be listed for assessment. The court, by West, J., said (pp. 460–461):

"If the defendant's charter had been silent in regard to taxation, the 'full amount' of its capital

> stock would have been subject to the provisions of this general law. . . . But instead of employing negative words, the guaranty assumed the form of an affirmative compact, subordinating one-half to the authority of general legislation, and exempting the other by the rule of *expressio unius exclusio alterius*. Such is clearly the origin, import and effect of the seventh clause of the defendant's charter."

The same question was reargued and reconsidered and the same conclusion reached in *Bridge Co.* v. *Mayer*, 31 Ohio St. 317, 322.

There are two classes of cases which present a very close analogy to the cases at bar and are governed by exactly the same rules of legal reasoning. The one is where the charter or ordinance has provided that a railway company may charge a certain rate, or not to exceed a certain rate, and the other where franchises have been granted upon an agreement to do a particular thing, such as to pave or repair part of a street. And it has been held repeatedly that the specific provision, having been made the subject of contract between the parties, necessarily excluded the power to increase the burden or obligation assumed.

That the closest analogy exists between the two governmental powers or functions of taxation and regulation of rates and tolls has been frequently recognized by this court. The reasoning and rules of construction and the principles of law and public policy which should be applied have been declared to be the same. In both cases nothing is to be presumed in limitation or restriction of legislative power except what is expressed or implied. *Stanislaus County* v. *San Joaquin C. & I. Co.*,

192 U. S. 201, 211; *Covington &c. Turnpike Co.* v. *Sandford*, 164 U. S. 578, 587; *Stone* v. *Farmers' Loan & Trust Co.*, 116 U. S. 307, 325; *Charles River Bridge* v. *Warren Bridge*, 11 Pet. 420, 548. But in both cases the elementary rule of legal reasoning, that what is implied is as much a part of a contract or statute as what is actually expressed, has never been disregarded. *County of Wilson* v. *National Bank*, 103 U. S. 770, 778; *Supervisors* v. *Lackawana Iron, etc. Co.*, 93 U. S. 619, 624; *National Bank* v. *Graham*, 100 U. S. 699, 703; *Township of Pine Grove* v. *Talcott*, 19 Wall. 666, 676; *Telegraph Company* v. *Eyser*, 19 Wall. 419, 427; *Davis* v. *Gray*, 16 Wall. 203, 223; *Lynde* v. *The County*, 16 Wall. 6, 13; *United States* v. *Hodson*, 10 Wall. 395, 406; *Butz* v. *City of Muscatine*, 8 Wall. 575, 581; *Croxall* v. *Shererd*, 5 Wall. 268, 283; *United States* v. *Babbit*, 1 Black, 55, 61; *Rogers* v. *Kneeland*, 10 Wendell, 219, 252.

Thus, it is settled by the adjudications of this court that a grant of power to a corporation to fix or collect tolls or rates does not of itself imply any exclusion of the power of the legislature thereafter to declare what shall be *prima facie* reasonable compensation for the services to be rendered; but it has never been even intimated by this court that, where the charter of a corporation or the agreement between a corporation and the state or a municipality has expressly provided for a fixed rate of toll or charge, such rate could be varied by the legislature or municipality without impairing the obligation of the contract. On the contrary, as Mr. Justice Brewer said in the case of *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 393:

"If the charter had in terms granted to the cor-

> poration power to charge and collect a definite sum per mile for the transportation of persons or of property, it would not be doubted that that express stipulation formed a part of the obligation of the State which it could not repudiate."

In the subsequent case of *Detroit* v. *Detroit Citizens' St. R'y Co.*, 184 U. S. 368, the exact point was presented. The city of Detroit had adopted an ordinance granting the right, as in the cases at bar, to lay tracks through designated streets and imposing numerous conditions, among others, in section 8, that "the rate of fare for any distance shall not exceed five cents in any one car, or on any route named in this ordinance," etc. (p. 375). It was held that the common council could not subsequently vary this fixed rate without impairing the obligation of the contract embodied in the ordinance.

So, also, in the recent case of *Cleveland* v. *Cleveland City Ry. Co.*, 194 U. S. 517, 526, the ordinance relied upon was passed February 16, 1885, and after granting the right to lay extensions of the original route of the railway company provided as follows:

> "But on the express condition that no increase of fare shall be charged by said railroad company on any part of its main line or on said extension, and so that but one fare, not to exceed five cents, shall be charged between any points on said company's main line or extension, including the extension herein granted," etc.

The point presented for adjudication was whether this ordinance, duly accepted by the street railway company, constituted a contract entitling it to charge "not to exceed five cents" for one fare, which could not be varied

or reduced by a subsequent ordinance, and it was held that the subsequent ordinance impaired the obligation of the contract embodied in the prior ordinance by attempting to reduce the rate. Mr. Justice White, delivering the unanimous opinion of the court, among other things, said (p. 536):

> "In reason, the conclusion that contracts were engendered, would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time and no reservation was made of a right to alter, that by those ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public, and obligations were imposed upon the corporations to continue those benefits during the stipulated time. When, in addition, we consider the specific reference to limitations of time which the ordinances contained, and the fact that a written acceptance by the corporations of the ordinances was required, we can see no escape from the conclusion, that the ordinances were intended to be agreements binding upon both parties definitely fixing the rates of fare which might be thereafter charged."

See also *Cleveland* v. *Electric Railway Co.*, p. 538 of the same report and decided at the same time.

So, also, in the case of contracts covering a particular thing, such as repairs, paving, etc., the burden assumed by contract cannot be increased by subsequent legislation.

In *Chicago* v. *Sheldon*, 9 Wall. 50, the city of Chicago had granted to the North Chicago City Railroad Company the right to construct a railway upon the company agreeing to keep certain specified parts of the street "in good repair and condition." Subsequently, the city sought to impose additional conditions of the

same nature. It was decided that any additional imposition would constitute an impairment of the obligation of the contract as originally assumed by the railway company and that, as such contract was valid at the time by the laws of the state, no decision of the courts of the state subsequently made could impair its obligation. Referring to the specific and definite agreement which the city had made with the company, Mr. Justice Nelson, delivering the opinion of the court, said (p. 54):

> "Now, it is quite clear that the above recitals embrace the whole subject of improvements of the streets, and that it was present to the minds of the parties when entering into the stipulation respecting repairs that followed."

And it was, therefore, held that the city could not, through the form of taxation or assessment for improvements, increase the obligation assumed by the railway company in respect of the subject which was in the minds of the parties and formed part of their express agreement.

See, also, to the same effect *The Western Paving and Supply Co.* v. *The Citizens' Street Railroad Co.*, 128 Indiana, 525; *The State ex rel.* v. *The Corrigan Street Ry. Co.*, 85 Missouri, 263; *Billings* v. *City of Chicago*, 167 Illinois, 340; *West Chicago St. R. R. Co.* v. *Chicago*, 178 Illinois, 344; *Coast-Line R. Co.* v. *City of Savannah*, 30 Fed. Rep. 646; *Provisional Municipality of Pensacola* v. *Northrup*, 63 Fed Rep. 689.

It remains to consider the franchises which are not covered by the act of 1884 and subsequent similar legislation, three being owned by the Metropolitan Company, two by the Twenty-third Street Company and

one by the Central Crosstown Company, severally plaintiffs in error, these franchises being directly granted by the legislature itself.

The three franchises of the Metropolitan Company were acquired as follows: The first was acquired under chapter 625 of the laws of 1868 (record, p. 64), section 2 of which provided, among other things, that "The said persons or their assigns shall pay to the sinking fund commissioners of the city of New York, the sum of one thousand dollars per annum," and section 4 of which provided (record, p. 66): "This act may at any time be amended, modified or repealed." The second franchise was acquired under chapter 19 of the laws of 1871 (record, p. 66), section 4 of which provided, among other things, for compensation and for an application by the grantee "to the supreme court for the appointment of three commissioners to appraise and determine the amount of compensation which shall be paid annually or in a gross sum, to the mayor, aldermen and commonalty, as such compensation for the rights and privileges herein granted" and that "the amount so fixed and determined shall be paid the commissioners of the sinking fund of said city, by the said company." This act contains no provision for amendment, modification or repeal. The third franchise was acquired under chapter 508 of the laws of 1874 (record, p. 60), section 2 of which provided that "The said persons or their assigns shall annually, on the first day of November, pay into the treasury of the city of New York one per cent. of the gross receipts of the road herein provided for," and

section 5 of which provided that "The legislature may at any time alter, amend or repeal this act." Subsequently, section 2 was amended by chapter 393 of the laws of 1875, so as to provide for the payment of two per cent. of the gross receipts instead of one per cent. as provided in the original act. This amendment contains no provision for alteration, amendment or repeal.

As to the two franchises of the Twenty-third Street Company: The first was acquired under chapter 823 of the laws of 1869 (record, p. 34), section 1 of which required the commissioners of the sinking fund of the city of New York to advertise and "sell at public auction to the highest bidder, the right, privilege and franchise" therein described; and section 5 of which provided that "The legislature may at any time alter, amend or repeal this act." Subsequently, chapter 521 of the laws of 1872 was enacted "to carry into effect the powers conferred by the first section of the above act upon the commissioners of the sinking fund of the city of New York," and directed the comptroller of the city of New York "on the payment into the city treasury by Sidney A. Yeomans, of the sum of one hundred and fifty thousand dollars, that being the amount of his bid, which was accepted," to issue to him a certificate of title to the grant. This act contains no provision for amendment, alteration or appeal. Subsequently, the certificate of title provided for in the act was formally issued (record, p. 39). The second franchise was acquired by the Twenty-third Street Company under chapter 100 of the laws of 1873, which

act made no provision for any pecuniary compensation for the franchise therein granted, and contained no provision for alteration, amendment, or repeal (record, p. 40).

The franchise of the Central Crosstown Company was acquired under chapter 160 of the laws of 1873 (record, p. 32), section 5 of which provided that "for the rights and privileges herein granted the said persons or their assigns shall annually, on the first day of December of each year, pay into the treasury of the city of New York three per centum of the gross receipts from the operation of the railroad"; and section 6 of which provided that "The legislature may at any time alter, amend or repeal this act."

It is submitted that each one of these grants by the legislature constituted a contract which entitled the grantee to be protected against the exaction of further payments to the state or to the city, within the principles of the decisions discussed above. The franchise of the Twenty-third Street Company granted upon the payment of $150,000, *accepted* by the legislature, is clearly covered by the *Gordon* case.

Nor does the reservation of power to alter or amend the acts or charters uphold the additional payments now sought to be imposed. The legislature cannot in one breath insist that the terms of its grant shall be performed by the grantee according to the letter (sec. 47), and in another breath say that it may under the reserved power release itself from any reciprocal duty and impose an additional tax while holding on to the contract. *Stearns* v. *Minnesota*, 179 U. S. 223.

It is said, however, that the Court of Appeals has de-

cided that notwithstanding the grant of such a franchise by the legislature and acceptance by the grantee, the act granting the franchise may be amended under the reserved power so as to impose additional obligations, and the case of *Mayor, etc.* v. *Twenty-third St. R. Co.*, 113 N. Y. 311, is cited. But, even if that case so decided, it is submitted that it would be clearly unsound and will not be followed by this court for two reasons, viz.,

(1) This court will determine for itself the scope and effect and true meaning of any contract the legislature has seen fit to make in consideration of the grant of rights and privileges. As Mr. Justice Harlan, delivering the opinion of the court in *Douglas* v. *Kentucky*, 168 U. S. 488, 500–501, said :

> "This court must determine—indeed, it cannot consistently with its duty refuse to determine—upon its own responsibility, in each case as it arises, whether that which a party seeks to have protected under the contract clause of the Constitution of the United States is a contract the obligation of which is protected by that instrument against hostile state legislation."

See also the leading cases of *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 443; *Railroad Co.* v. *Maine*, 96 U. S. 499, 510, 511; *New Jersey* v. *Yard*, 95 U. S. 104, 111, 113; *McCullough* v. *Virginia*, 172 U. S. 102, 109; *Shelby County* v. *Union &c. Bank*, 161 U. S. 149, 151; *Houston and Texas Central Rd. Co.* v. *Texas*, 177 U. S. 66, 67.

(2) The reserved power to alter, amend, or repeal does not permit or sanction the destruction of vested

property rights. *People* v. *O'Brien, supra*, 111 N. Y. 1, 36. This subject received the most exhaustive examination in the *Sinking-Fund Cases*, 99 U. S. 700, where Chief Justice Waite, delivering the opinion of the court and speaking of the power to alter, amend or repeal, used the following language in reference to the scope of such reservation (p. 720):

> "That this power has a limit, no one can doubt. All agree that it cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made."

Mr. Justice Bradley, dissenting, used the following equally strong language, at p. 749:

> "The reserved power in question is simply that of legislation,—to alter, amend, or repeal a charter. This is very different from the power to violate, or to alter the terms of a contract at will. A reservation of power to violate a contract, or alter it, or impair its obligation, would be repugnant to the contract itself, and void. A proviso repugnant to the granting part of a deed, or to the enacting part of a statute, is void. Interpreted as a reservation of the right to legislate, the reserved power is sustainable on sound principles; but interpreted as the reservation of a right to violate an executed contract, it is not sustainable.
>
> "The question then comes back to the extent of the power to legislate. But that is a restricted power,—restricted by other constitutional provisions to which reference has already been made. Certainly the legislature cannot in a charter of incorporation, or in any other law, reserve to itself any greater power of legislation than the Constitution itself concedes to it. It seems to me clear, therefore, that the power reserved cannot authorize a flat abrogation of the con-

tract by Congress, because, as before shown, such an abrogation would be a violation of those clauses which inhibit the taking of property without process of law and without compensation."

And Mr. Justice Field, also dissenting, among other things, said, at p. 758:

"There have been much discussion and great difference of opinion on many points as to the meaning and effect of a similar reservation in statutes of the states, but on the point that it does not authorize any interference with vested rights all the authorities concur. Such was the language of Chief Justice Shaw in the case cited from the supreme court of Massachusetts; and such is the language of Mr. Justice Clifford in the cases cited from this court. And such must be the case, or there would be no safety in dealing with the government where such a clause is inserted in its legislation. It could undo at pleasure everything done under its authority, and despoil of their property those who had trusted to its faith. *Commonwealth* v. *Essex Company*, 13 Gray (Mass.) 239; *Miller* v. *The State*, 15 Wall. 478; *Holyoke Company* v. *Lyman*, id. 500. See also *Shields* v. *Ohio*, 95 U. S. 319, and *Sage* v. *Dillard*, 15 B. Mon. (Ky.) 349."

As Mr. Justice Holmes, then Chief Justice of Massachusetts, said in *Woodward* v. *Central Vermont Railway*, 180 Massachusetts, 599, 604:

"An unqualified power to amend authorizes a modification of the franchise conferred, but does not authorize a departure from the general restrictions on legislation with regard to property acquired and owned by the company, by the device of inserting a confiscation clause in the charter by way of amendment. *Commonwealth* v. *Essex Co.*, 13 Gray, 239, 253. *Sinking-Fund Cases*, 99 U. S. 700, 720, 741, 748, 758. *Detroit* v. *Detroit & Howell Plank Road Co.*, 43 Mich. 140, 147. *People* v. *O'Brien*, 111 N. Y. 1. *Dow*

> v. *Northern Railroad*, 67 N. H. 1. See *Attorney General* v. *Old Colony Railroad*, 160 Mass. 62. . . . We agree that every reasonable presumption is to be made in favor of the validity of the act. . . . But we cannot invent fictions to save acts of the Legislature."

The opinion of Chief Justice Shaw in *Commonwealth* v. *Essex Company*, 13 Gray, 239, contains the following statement directly applicable to the present discussion (pp. 253–254):

> "It appears to us, in the present case, that after the government, acting in behalf of the public, and also of all those riparian owners whose fish rights would be damnified by the defendants' dam, with the fishway as it was, entered into a solemn and formal contract with the defendant company to exempt them from the obligation of making and maintaining a suitable and sufficient fishway, if such were practicable, by indemnifying all parties damnified in their several fisheries, and the defendant company had executed their part of the contract by the payment of a large sum of money, it was not competent for the legislature, without any change of circumstances, under their authority to amend and alter the charter of the company, to pass a law requiring them to do the acts from which, by the terms of such contract, they had been exempted."

The case of *Mayor, etc.* v. *Twenty-third St. R. Co.*, 113 N. Y. 311, arose as follows: The legislature of New York, on April 11, 1873 (L. 1873, c. 199), extended the charter of an existing street railway corporation so as to authorize it to extend its road beyond what was previously authorized and provided (p. 314) that "the said company shall pay to the corporation of the city of New York a license fee of fifty dollars for each and every car used by them on said extensions." There was no

suggestion that such license fee was in consideration of any franchise or was other than a regulation of the company. At the same session of the legislature and on May 29, 1873, "a little more than a month later," it was enacted (L. 1873, c. 647,) that the company "shall in lieu of the payment to the corporation of the city of New York of a license fee of fifty dollars for each and every car used by said company, . . . annually, on the first day of October, pay into the treasury of the city of New York, one per cent. of the gross receipts of said company." This was held to be a proper exercise of the reserved power to alter or amend the charter of the company. It does not appear, either in the report of this decision or in the report of the decision in the court below (48 Hun, 552), whether anything had been done by the company under the act of April 11, 1873, and before the act of May 29, 1873, which, if done, would have operated to invest the company with an irrevocable right of property consisting of an interest in the streets in perpetuity, for the purposes of a street railroad (*People* v. *O'Brien*, 111 N. Y. 1, 38). No acceptance or answer was shown. Presumably nothing had been done during the month which intervened between the two acts, amounting to an acceptance of the first, for the *O'Brien* case was distinguished with the simple statement (p. 317), that "under its reserved power it cannot deprive a corporation of its property, or interfere with, or annul its contracts with third persons," and it was held (p. 318) that "this change, the legislature was competent to

make within every authority that can be found in the books."

The learned judge who delivered the opinion of the Court of Appeals in the cases at bar (Vann, J.), pointed out that there was no express provision in the contracts for exemption from taxation and that such a provision would be void for want of power (Metropolitan rec., p. 592; 174 N. Y. 448); but the learned judge, it is submitted, overlooked the real question presented, which was, in most of the cases, whether the stipulation for a fixed annual amount or percentage of gross receipts provided for a tax so as to prevent the state or city from increasing the amount stipulated for and agreed upon. The court will look in vain for any discussion of the true point involved. The suggestion that the contracts would have been void for want of power is clearly unsound, because the contracts entered into were specifically authorized by the legislature itself; the constitution of the state contained no prohibition, and it has never heretofore been suggested that the legislature of New York could not, in granting franchises, exempt from taxation, or commute taxes, or provide for definite or limited taxation, or authorize the city to do so. Quite the contrary is the settled law, and the state so conceded before the referee, *supra* p. 28. *People ex rel. Troy Union R. R. Co.* v. *Carter*, 52 Hun, 458, 461; aff'd, 117 N. Y. 625. As this court said in *Jefferson Branch Bank* v. *Skelly*, 1 Black, 436, 448:

> "This court's view of that clause of the Constitution, in its application to the States, is now, and ever has been, that State Legislatures, unless prohibited

> in terms by State constitutions, may contract by legislation to release the exercise of taxing a particular thing, corporation, or person, as that may appear in its act, and that the contrary has not been open to inquiry or argument in the Supreme Court of the United States."

Moreover, the far-reaching exemption of the subway companies under section 35 of the Rapid Transit Act shows the practice and undisputed power of the legislature to grant exemptions from taxation if it thinks the public interests require it (*infra*, p. 106).

The ruling of the learned referee (see Metropolitan rec., p. 460) was clearly based upon the erroneous assumption that the *Gordon* case had been disapproved, not only by the cases cited to him by the state (*supra*, p. 54), but also by *The Delaware Railroad Tax*, 18 Wall. 206, which was likewise relied on by the state. An examination of that case, however, will show that it was also an error to assume that it overruled the prior case.

In the first place, the *Delaware Railroad Tax* case did not cite or discuss the *Gordon* case at all, nor does it announce any doctrine in conflict with that case. In the *Delaware* case, a statute enacted in 1835 authorized the consolidation of an existing corporation with another corporation and repealed the provision in the original charter requiring the payment of a tax of eight per cent. on the dividends exceeding six per cent. of the capital stock actually paid in, substituting a provision that the consolidated company should pay annually into the treasury of the state "a tax of one-quarter of one per cent. on its capital stock of four hundred

thousand dollars," etc. Thereafter, in 1869, the legislature passed an act imposing on railroad companies and canal companies in the state "a tax of three per cent. upon their net earnings or income received from all sources during the preceding year," and also "a tax of one-fourth of one per cent. upon the actual cash value of every share of its capital stock." It was not contended that the three per cent. tax upon net earnings or income was in any way in conflict with the tax upon capital stock. The only question was whether the additional tax of "one-fourth of one per cent. upon the actual cash value of every share of its capital stock" conflicted with the provision stipulating for "a tax of one-quarter of one per cent. upon its capital stock of four hundred thousand dollars." In delivering the opinion of the court, Mr. Justice Field pointed out that the tax provided for in the amendatory act did not indicate any intent on the part of the legislature that "no further or different tax should not (*sic*) be subsequently levied" (p. 226). The conclusion of the court was that the act of 1869 did not impose a tax upon the shares of the individual stockholders nor upon the property of the corporation, but upon the corporation itself, measured by a percentage upon the cash value of a certain proportional part of the share of its capital stock. There is no suggestion that such a tax was of the same nature as a tax upon capital stock, or that a stipulation fixing a definite amount of such a tax upon the actual value of shares would not have precluded a subsequent increase of that very same tax.

Subsequent cases in this court, however, show very clearly that a tax on capital stock and a tax on shares are entirely different, and that for purposes of taxation they constitute separate and distinct subjects. *Farrington* v. *Tennessee*, 95 U. S. 679, 686; *Shelby County* v. *Union &c. Bank*, 161 U. S. 149, 154. In the latter case, Mr. Justice Peckham, delivering the opinion of the court and distinguishing *Farrington* v. *Tennessee*, used the following language (pp. 153–154):

> "There are undoubtedly some expressions in the opinion of Mr. Justice Swayne which lend color to the idea that, in his belief, not only were the shares in the hands of the shareholders exempt from any further taxation than that imposed by the charter, but that the property of the corporation was itself exempt from any taxation other than that provided for in that section; the latter question, however, was not before the court and was not decided by it, and we are of opinion that, assuming that the charter tax was laid upon the shares of stock in the hands of the shareholders, the exemption from further taxation applies to the subject which was taxed under the charter, and is not of any greater scope, and that it would not, therefore, include the exemption from taxation of either the capital stock or the surplus, which is the property of the corporation itself. We come to this conclusion because of the fact, well established by the decisions of this as well as many state courts, that there is a clear distinction between the capital stock of a corporation and the shares of stock of such corporation in the hands of its individual shareholders. So separate are these properties, and so distinct in their nature, that the taxation of the one property is not the taxation of the other. This is no new doctrine, and the distinction between the two properties was

recognized by the Supreme Court of Tennessee as long ago as in the case of the *Union Bank* v. *State*, 9 Yerger, 490, decided in 1836. It was held that, under the clause of the charter there under consideration, any further tax on the capital stock than that which was provided for in the charter itself was void, but that the State might tax the shares of stock in the hands of individuals notwithstanding the exemption from further taxation on the capital stock."

The other cases cited by the learned referee at page 457 are, as he points out, all cases in which there were attempts by cities to change or destroy contracts granting franchises by ordinances which were held to impair the obligations of the contracts which the city had entered into. The four cases cited on page 462 sustain the general proposition that the intention to exempt from taxation must appear in plain and unambiguous language, which proposition has not been challenged. But none of these cases questions the correctness of the rule that necessary implication is as effective as express statement, and that when a city or state contracts with a corporation for a fixed annual tax on a particular franchise, it is necessarily implied that it may not, either directly or indirectly, increase that *same* tax by subsequent legislation without impairing its contract.

II.

AS TO THE CONFLICT OF THE STATUTE WITH THE FOURTEENTH AMENDMENT.

The court is called upon in the cases at bar for the first time to determine the principles which should guide legislatures in taxing the owners of local or special franchises, such as the privilege to use a public highway or street for a public purpose.

Whatever may have been intimated in earlier cases to the effect that the Fourteenth Amendment imposed no restraint upon the states against unequal taxation and prescribed no rule of equality, it is now hardly open to question that the amendment does afford practical and effective protection against arbitrary or unequal taxation, and that its spirit and its meaning alike require that taxes imposed upon property of substantially the same kind, in substantially the same situation, and used for substantially the same purposes, shall be equal so far as equality may be practically attainable. A statute which attempts to classify those engaged in the same business and owning similar property and to discriminate among them unfairly or unnecessarily is repugnant to the Fourteenth Amendment.

It is, of course, frequently found, in the practical operation of a general system of taxation, that exceptional or accidental hardships and inequalities will result, which it would have been difficult to foresee and which it would perhaps have been impracticable to anticipate and provide against. Such unavoidable inequality may not render the statute unconstitutional. But where substantial equality is readily attainable, and where it is plain that members

of a class are unfairly and unjustly discriminated against in a manner easy to obviate, the statute cannot be permitted to stand.

The plaintiffs in error submit that the Special Franchise Tax Law now before the court operates arbitrarily to deny them the equal protection of the laws and due process in three separate and distinct aspects, namely, (1) in that it adds to the obligations of their various contracts while preserving all the burdens of those contracts; (2) in that it provides for the deduction of annual payments covered by existing contracts from the amount of tax levied, by reason of which deduction those who agreed to pay for their franchises lump sums or annual amounts less than the new tax are discriminated against; and (3) in that it discriminates against them and subjects them to taxation, while their competitors operating under the surfaces of many of the same streets are to be exempted.

(1) The present statute seeks to add to the obligations assumed in the various contracts, and at the same time expressly to preserve all the burdens of those contracts (sec. 47). As upheld by the court below, the act is nothing but an arbitrary exercise of power, and comes within the reasoning and the condemnation of the case of *Stearns* v. *Minnesota*, 179 U. S. 223, where Mr. Justice White concurring and speaking for himself, Mr. Justice Harlan, Mr. Justice Gray and Mr. Justice McKenna, among other things, said (pp. 261–262):

> "My understanding does not permit me to doubt that to preserve in this case the contract in its entirety, so far as the rights of the State are concerned,

and at the same time to destroy the reciprocal duty owed by the State to the other contracting party, is not to repeal, alter or amend the contract at all, but, whilst preserving it, to endeavor by an act of arbitrary power to impose a burden incompatible with the very provisions and terms of the amendatory act itself. As has been previously said, the consideration of the contract obligation of the corporation to pay the gross receipt tax was the duty on the part of the state to consider such payment as a discharge of all taxes upon all the real and personal property of the corporation. The agreements being thus interdependent are of necessity indivisible, and to retain the entire duty or right of one party to the contract must lead to the preservation of the corresponding and reciprocal right or duty of the other. In reason, the argument comes to this, that the act purporting to amend, on its face cannot be declared to have done so, without concluding at the same time both that it did alter, repeal and amend, and that it did not. Under these circumstances, to enforce the amendatory act would necessarily be to deny to the corporation the equal protection of the laws, since it would leave the corporation subject to taxation, not by the general laws of the state but by the provisions of a contract, and at the same time subject the corporation to a burden wholly incompatible with its liability under the contract. It would be a denial of due process of law to the corporation, since it would be but the recognition of the right of the state, without hearing and without process of any kind, to condemn the corporation to the performance of a duty alleged to be resting on it, and at the same time retain in favor of the state as against the corporation an obligation wholly at variance and in absolute conflict with the supposed duty arbitrarily declared by the amendatory act to rest upon the corporation."

It is true that this emphatic declaration, so pertinent to the cases at bar, is said not to be the opinion of the court and only that of four of its justices, but such contention quite overlooks the fact that in the subsequent case of *Duluth &c. R'd* v. *St. Louis County*, 179 U. S. 302, 305, decided one week after *Stearns* v. *Minnesota*, the court adopted the concurring opinion of Mr. Justice White in the prior case and, among other things, said:

> "For this reason, we conclude that the act which it is asserted repealed or amended the contract was void, because a mere arbitrary exercise of power giving rise, if enforced, not only to a denial of the equal protection of the laws, but to a deprivation of property without due process of law. The reasons by which we are led to this conclusion were fully expressed in the concurring opinion of four members of the court in *Stearns* v. *Minnesota*, and need not be here repeated."

The cases at bar equally present the case of a mere arbitrary exercise of power. The plaintiffs in error are held to the obligations of existing contracts, but the state and city seek to repudiate any reciprocal obligation, and to subject them to a general law without releasing them from the obligations of their special contracts under which they and others similarly situated have paid to the city of New York during the fifteen years preceding the passage of the tax law in question over $2,900,000.

It is submitted, as a sound and just proposition of constitutional law, that a legislature cannot select a class for taxation, such as the owners of franchises to use the

streets of a city for street railroad or gas or other public utilities, and subject their franchises to a general *ad valorem* tax such as is paid by all other property owners, and at the same time provide that any special taxes upon such franchises which a part of the class are paying by contract shall not be released, but shall be levied and collected.

Moreover, when the legislature says, as it does in the present statute, that it will no longer treat special franchises to use the streets of cities as particular property subject to classification by itself, but will classify them with all other real estate and subject them to the same taxation, state and local, as all other real estate, it cannot provide that the owners of such special franchises now to be so classified as real estate, may deduct any rentals, annuities or instalments of purchase-price from their tax, when all other owners of real estate pay taxes without any such deductions.

The famous *California Railroad Tax Cases* (*County of San Mateo* v. *Southern Pacific R. Co.*, 13 Fed. Rep. 145; *The Railroad Tax Cases*, 13 Fed. Rep. 722; *County of Santa Clara* v. *Southern Pac. R. Co.*, 18 Fed Rep. 385; *San Mateo County* v. *Southern Pac. R. R. Co.*, 116 U. S. 138; *Santa Clara Co.* v. *South. Pac. Railroad*, 118 U. S. 138) are analogous to the cases at bar, and the opinions display such thorough consideration of the question now under discussion, that they merit an extended examination.

In those cases, there was drawn in question a provi-

sion of the constitution of the state of California which had been construed to require assessments of the property of "railroad and other *quasi* public corporations" at its full value without deduction for any mortgage indebtedness, and to permit the amount of mortgage indebtedness to be deducted from assessments of other property, and there appeared to be nothing in the system of taxation as otherwise administered in the state which furnished a reason for this discrimination. The direct and necessary result of the enforcement of this provision, thus construed, was to compel "railroads and other *quasi* public corporations" to bear a larger share of the burdens of taxation in proportion to the value of their property than other property owners. And it was held that assessments of railroad property in accordance with that construction violated the equal protection clause of the Fourteenth Amendment. It was urged in defense of the assessments that the Fourteenth Amendment did not deprive the state of the right to classify persons and property and impose different burdens on different classes. And this was admitted. But it was held that the equal protection clause of the Fourteenth Amendment did forbid arbitrary discriminations between persons in like situation under similar circumstances, and, as no difference between a general property tax on "railroads and other *quasi* public corporations" and the same tax on all other persons and corporations could be pointed out sufficient to furnish a just and proper reason

for the classification, the assessment was condemned as an arbitrary discrimination. Mr. Justice Field in his opinion in *The Railroad Tax Cases*, 13 Fed. Rep. 722, 735–738, said :

> "Whenever an individual holds property incumbered with a mortgage he is assessed at its value, after deducting from it the amount of the mortgage. If a railroad company holds property subject to a mortgage, it is assessed at its full value, without any deduction for the mortgage; that is, as though the property were unincumbered. The inequality and discriminating character of the procedure will be apparent by an illustration given by counsel. Suppose a private person owns a farm which is valued at $100,000 and is incumbered with a mortgage amounting to $80,000; he is, in that case, assessed at $20,000; if the rate of taxation be 2 per cent. he would pay $400 taxes. If a railroad corporation owns an adjoining tract worth $100,000, which is also incumbered by a mortgage for $80,000, it would be assessed for $100,000 and be required to pay $2,000 taxes, or five times as much as the private person. There is here a discrimination too palpable and gross to be questioned, and such is the nature of the discrimination made against the Southern Pacific Railroad Company in the taxation of its property. Nothing can be clearer than that the rule of equality and uniformity is thus entirely disregarded. . . .
>
> "It is no answer to this discrimination to say that property in the state may be divided into classes, and different rates prescribed for them. Undoubtedly property may be classified for purposes of taxation. Real property may be subjected to one rate of taxation; personal property to another rate. Property in particular districts may be taxed for local purposes, while property elsewhere may be exempt. Taxation

on business in the form of licenses may also vary according to the calling or occupation licensed, and the extent of business transacted, but even then there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation of property that we are concerned in this case, and the whole object of classifying property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the state for the property of railroad corporations, and the rate prescribed for the property of individuals. There is only one rate for all property. There is, therefore, no case presented for the application of the doctrine of classification. The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value; as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained, the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property then upon the property of individuals similarly incumbered, or rather requires the assessor of the defendant's property, in estimating its value, to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties, which has a mortgage upon it, shall be assessed at its value after deducting the mortgage; and that the property

of other parties, also having a mortgage upon it, shall be taxed at its full value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner."

Circuit Judge Sawyer concurred in the opinion of Mr. Justice Field, and further said (pp. 772–773):

"The question does not appear to me to admit of argument. Upon the very statement of the proposition it seems to me to be self-evident that a law authorizing and requiring such proceedings does not afford, but expressly denies, the equal protection of the law. The constitution in the one case says that 'the mortgage, deed of trust, contract, or obligation' shall be 'deemed and treated as an interest in the land thereby affected,' which, in the cases supposed, together with the debt secured, it undoubtedly in fact is; but in effect the constitution says it is not so in the other case. . . . If the arbitrary discrimination and classification found in this case can be legally made under the constitution and the law of the land, then the constitution or the law can be so framed as to dispose of a man's rights in property of all kinds by arbitrary classification and definition, without regard to the real facts, circumstances, or conditions of the property. A person may be classified and defined out of the equal protection of the law."

Subsequently, in his opinion delivered in *County of Santa Clara* v. *Southern Pac. R. Co.*, 18 Fed. Rep. 385, after the argument of the *San Mateo* case in this court, in the hearing of which he participated (116 U. S. 138), Mr. Justice Field further said (pp. 408–409):

"The ground of complaint is not that any different rate of taxation is adopted—for there is none—but that a different rule is followed in ascertaining the

> value of the property of railroad corporations, as a basis for taxation, from that followed in ascertaining the value of property held by natural persons. In estimating the value in one case, certain elements are considered, by which the value as a basis for taxation is lessened; in estimating the value in another case, those elements are omitted, by which the valuation is proportionately increased. All property of railroad corporations, whether used in connection with the operation of their roads or entirely distinct from any such use, is estimated without regard to any mortgages thereon, while the property of natural persons is valued with a deduction of such mortgages. . . . The discrimination between the railroad companies and individual proprietors, in the estimate of the value of their property, is made because of its ownership, and not from any specific differences in the character of the property, or in the specific uses to which it is applied."

The cases at bar present a much stronger instance of arbitrary classification than that presented in the *California Railroad Tax Cases*. Here, the discrimination is between corporations of exactly the same character in exactly the same situation, taxing one and exempting the other. There, the discrimination was between railroads and other *quasi* public corporations in the one class and all other persons in the other class, taxing one and exempting the other. Whatever reason might have existed in those cases for sustaining the classification because of the difference between railroads and other *quasi* public corporations on the one hand and all other persons on the other hand, has no existence in the cases at bar. Certainly, there is no ground upon which the classification in those cases could be condemned and the classification in the present cases sustained.

See also, to the same effect, *Russell* v. *Croy*, 164 Missouri, 69, 97–110; *State* v. *Mitchell*, 97 Maine, 66, 70; *State* v. *Shedroi*, 75 Vermont, 277, 281; *State* v. *Hoyt*, 71 Vermont, 59, 64; *Dundee Mortgage, etc., Co.* v. *School-Dist. No. 1*, 19 Fed. Rep. 359, 370; *Fraser* v. *M'Conway & Torley Co.*, 82 Fed. Rep. 257, 260; *Railroad and Telephone Cos.* v. *Board of Equalizers*, 85 Fed. Rep. 302, 317 (aff'd, *Taylor* v. *Louisville & N. R. Co.*, 88 Fed. Rep. 350, 355, writ of certiorari denied, 172 U. S. 647); *Nashville, C. & St. L. Ry.* v. *Taylor*, 86 Fed. Rep. 168, 179 (appeal dismissed on stipulation of counsel, *Taylor* v. *Nashville C. & St. L. Ry.*, 44 L. ed. 1219); *Louisville Trust Co.* v. *Stone*, 107 Fed. Rep. 305–306.

If it should be argued that it is proper to deduct the amount of these contract obligations from the tax laid upon the value of the contract rights for reasons which would sustain deductions of mortgage indebtedness from assessments of real estate for taxation, the answer is obvious. The present deductions are not made from the assessments; on the contrary, "under the scheme provided by the present statute the franchise is to be assessed as real estate; that is to say, not subject to diminution for charges thereon" (*Heerwagen* v. *Crosstown St. Ry. Co.*, 179 N. Y. 99, 106); and further, under the laws of New York, such obligations are deductible from the personal assessment. (*People ex rel. Cornell S. Co.* v. *Dederick*, 161 N. Y. 195, 204; *People ex rel. Manhattan Ry. Co.* v. *Barker*, 165 N. Y. 305, 314.)

(2) There are now before the court three classes of franchises to operate street railways in the city of New York: First, franchises granted without payments, pre-

sumably because the risk involved at the time did not warrant any payment; secondly, franchises for which a lump sum was paid, as in the case of the Twenty-third Street Company; and thirdly, franchises for which annual payments were agreed to be made, either of a fixed sum or of a fixed percentage of gross receipts, or both.

Now, if these payments were in the nature of taxes—that is, commutation of taxes in the case of the lump sum and annual taxes in the other cases—the increase of such taxes, as we have seen, would impair the obligations of the several contracts. If, however, as contended by the state, the agreements were not to pay taxes but only rental or purchase-price, the question is then presented, how these payments should be treated in any fair, just or equal system of taxation. Should the annual rental payments thus agreed to be made be *deducted* from the taxes as the statute provides, when no allowance is made for lump sum payments, or should this annual charge be capitalized, as an annuity would be, and the capital amount deducted from the value in order to ascertain the legal basis of assessment?

It was upon this point that Judge Cullen, delivering the unanimous opinion of the Court of Appeals in the recent case of *Heerwagen* v. *Crosstown St. Ry. Co.*, 179 N. Y. 99, 106, used the following language:

> "It may be that this view is erroneous, and that the more accurate and equitable way would be to determine the value of the franchise not as free and clear but as burdened by the charges to which it might be subject. Nevertheless it is plain that this view was accepted by the legislature, for under the scheme

provided by the present statute the franchise is to be assessed as real estate; that is to say, not subject to diminution for charges thereon, and the allowance for such charges is made only by deducting them from the tax."

Governor Odell in a message to the legislature has also pointed out that the present system of assessing these franchises was "inequitable and a source of constant annoyance and constant litigation" and that many corporations "cannot bear the excessive burden which is now imposed under the law" (Senate Documents, No. 11, pp. 7, 8).

The question, therefore, is whether, it being plain and clear that a method of taxation was open to the legislature, not only more accurate and equitable, but which would have made the law operate with practical equality on all similarly situated, the act should not be condemned and the legislature left to amend it.

A few simple examples will illustrate the point. Let us assume that a franchise has been granted in consideration of the payment of a lump sum of $150,000 (as in the case of Twenty-third Street Company), and that another similar franchise has been granted in consideration of the agreement to pay $6,000 per annum, and that both franchises are only worth what has been agreed to be paid. Taking them as being worth what has been agreed to be paid and the value of money as being four per cent., each franchise would be worth $150,000, although one was paid for in a lump sum and the other by the estimated annual income or value of that lump sum. Under the statute, each franchise would be assessed at its actual value, namely, $150,000; and if the

tax rate in the city amounted to four per cent. the result would be as follows: The grantee who paid $150,000 in a lump sum would be subject to a tax of $6,000 per annum, but the grantee who had agreed to pay $6,000 per annum, or an equivalent in percentage on gross receipts, would pay nothing because, under the statute, he would be entitled to deduct his agreed payment from the amount of the tax. Taking, again, the case of similar franchises which have doubled in value where the gross earnings have also doubled: The grantee who paid the lump sum would find himself assessed upon a basis of $300,000, which at four per cent. would be $12,000 per annum in taxes; but the grantee who had agreed to pay four per cent. for the same franchise on the same earning capacity might find himself assessed also at $300,000, but, as his gross earnings had also doubled, he would be entitled to deduct from his tax what he was paying for the franchise, and thus his tax would be nothing as against $12,000 payable by his competitor under exactly the same conditions.

Yet, all this unfairness and inequality could easily have been avoided by providing, not that the grantee paying an annual rent or charge should deduct that charge from his annual tax, but that the annual charge should be taken into consideration in ascertaining the actual value of the franchises and the capitalized value of the charge deducted, for, of course, in the case of a man who owns an interest in property, which is conditioned upon and subject to an annual charge, the true net value of that interest can be arrived

at only by deducting the capitalized value of the charge. Thus, two franchises might have exactly the same earning capacity and produce the same net results and each might be worth the same amount if both had been granted upon the same conditions; but if one was granted without pecuniary consideration and the other with an annual charge upon it, the capital value of that annual charge would necessarily have to be deducted in order to ascertain the true value for assessment and taxation.

(3) In the cases at bar, it is peculiarly just that the plaintiffs in error should be afforded the fullest measure of protection, because they now find themselves, after the investment of their immense capital, not only already taxed to an enormous amount in seven different forms, but subjected to competition with grantees of the state and city, who render the same service under some of the very streets where plaintiffs in error operate their surface lines, and who are exempted from taxation.

The legislature has selected for taxation "all surface, *underground* or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, *under*, above, on or through, streets, highways, or public places," but it has arbitrarily exempted, under section 35 of the Rapid Transit Law, competitors of the plaintiffs in error conducting exactly the same business under the same streets. Nor can it be suggested that this unfair result was not con-

templated, for the very next year the legislature re-enacted the same section in identical language (L. 1900, ch. 616), for the purpose of avoiding the possibility of its being held that this exemption had been repealed by the Special Franchise Tax Law.

We are not dealing, in the cases at bar, with a community, even though it be the great state of New York, which has had a public policy antagonistic to the creation and grant of limitations upon, or exemptions from, taxation. The state is now holding out inducements to capitalists, by way of exemption from taxation, in order to influence them to invest their funds in new methods of transportation in the city of New York in direct competition with the plaintiffs in error, by means of subway systems partly under the very streets for the use of which the plaintiffs in error have for many years been paying large annual taxes. Such subway systems are practically exempted from taxation in order the more effectively to enable their grantees to compete with the surface railways which serve exactly the same public. The scope and extent of the exemption from taxation thus extended in the city of New York to those engaged in the same business as the plaintiffs in error will be seen by a perusal of section 35 of "The Rapid Transit Act." L. 1891, ch. 4, as follows:

> "§ 35. The equipment to be supplied by the person, firm or corporation operating [any] such road shall include all rolling stock, motors, boilers, engines, wires, ways, conduits and mechanisms, ma-

chinery, tools, implements and devices of every nature whatsoever used for the generation or transmission of motive power and including all power-houses, and all apparatus and all devices for signaling and ventilation. Such person, firm or corporation shall be exempt from taxation in respect to his, their or its interest under said contract and in respect to the rolling stock and all other equipment of said road, but this exemption shall not extend to any real property which may be owned or employed by said person, firm or corporation in connection with the said road." (Added by L. 1894, ch. 752; am'd by L. 1896, ch. 729; L. 1900, ch. 616.)

We thus have a discrimination against the surface systems which has no support in reason. There is, in the nature of things, no substantial difference between the business of carrying passengers for hire in a city by means of subways under the streets and on the surface of the streets or over the streets. The present statute so declares. "In, under, above, on or through" are the words used. Indeed, the discrimination is even stronger than if merely between surface and subway, for the Metropolitan Company as lessee operates a subway or tunnel on Fourth Avenue in the city of New York, while the Interborough Company, its exempted competitor, operates in another tunnel under the very same Fourth Avenue, separated only by a few feet of flooring.

III.

PRACTICE.

Although the specific federal questions under the Fourteenth Amendment now urged for review were not formally set up in the petition on which the proceedings were based, except by general reference to the Constitution of the United States, it appears from the opinion and decision of the late Judge Earl, who acted as referee and decided all the cases, that the validity of the statute, on the ground of its being repugnant to the Fourteenth Amendment, was drawn in question before him and that he decided in favor of the validity of the statute. An appeal was then taken to the Appellate Division of the Supreme Court from the decision entered upon the learned referee's report. As the judgment was reversed in favor of the relators upon a point arising under the state constitution which disposed of the whole controversy, it became unnecessary for that court to decide, and it did not decide or discuss, any federal question. As Mr. Justice Blatchford said in *Phila. Fire Association* v. *New York*, 119 U. S. 110, 116:

> "If the court had decided in its favor any one of the questions which went to the whole cause of action, there would have been no necessity for considering the Federal question."

Thereupon, the state appealed to the Court of Appeals from the decree of reversal, but no appeal was taken, nor was such appeal permissible on the part of the relators, now plaintiffs in error. In the Court of Appeals, as in the intermediate Appellate Division, however, the federal questions were fully presented. In the division

of labor among the counsel engaged in the series of cases argued and decided at the same time, separate briefs were filed and separate arguments made by counsel who devoted themselves principally or solely to the federal questions. The Court of Appeals, after holding the statute valid under the state constitution, added as follows (174 N. Y. 417, 449):

> "The further contention of the relators . . . that due process of law was not observed in the taxation of their property, after due consideration we overrule, without further expression of reasons than already appears.
>
> "In reviewing these cases we have received great aid from the strong and exhaustive opinion of the late Judge Earl, for many years a distinguished member of this court, who, acting as referee, decided them in the first instance, after *full and careful consideration of all the questions involved.*"

It is true that it does not literally appear in the opinion of the Court of Appeals itself that the questions under the Fourteenth Amendment were decided by that court, but the court does specifically overrule the contention "that due process of law was not observed in the taxation of their property," and refers to the opinion of Judge Earl as aiding it and covering or embodying *all the questions involved.* The plaintiffs in error, therefore, submit that, under such circumstances, the opinion of the learned referee may be consulted to ascertain and determine whether federal questions were really and substantially presented and decided as among the questions involved in the cases. If the Court of Appeals had not understood that Judge Earl's opinion

correctly recited "all the questions involved" in the appeal then before it, other language would have been used.

The language of Judge Earl as referee covering the federal question under the Fourteenth Amendment is as follows (Metropolitan rec., p. 473):

> "4. The objection that the relators did not have due process of law in the taxation of their property is without foundation. . . . And they have also had the equal protection of the laws within the meaning of the Fourteenth Amendment of the Constitution."

This language, read in connection with the formal references in the petition (p. 7) to the statute being in violation of "the provisions of the Constitution of the United States," would seem to establish quite clearly that the learned referee was passing upon the due process clause of the Fourteenth Amendment as well as the equal protection clause.

The cases at bar come within the second class of those provided for in section 709 of the Revised Statutes. As Mr. Justice Day said in the recent case of *Harding* v. *Illinois*, 196 U. S. 78, 85-86, decided at this term—

> "It has been frequently held that in cases coming within this class less particularity is required in asserting the Federal right than in cases in the third class, wherein a right, title, privilege or immunity is claimed under the United States, and the decision is against such right, title, privilege or immunity. In the latter class the statute requires such right or privilege to be 'specially set up and claimed.' Under the second class it may be said to be the result

> of the rulings in this court that if the Federal question appears in the record in the State court and was decided, or the decision thereof was necessarily involved in the case, the fact that it was not specially set up will not preclude the right of review here. *Columbia Water Power Co.* v. *Columbia Street Columbia Water Power Co.* v. *Columbia Street Railway, &c. Co.*, 172 U. S. 475, and cases cited on p. 488."

In determining what was decided by the state court and whether a particular federal point was drawn in question, it is now the settled practice of this court to look into the opinion of the highest court of the state in order to determine whether or not a federal question was presented and decided. *Phila. Fire Association* v. *New York*, 119 U. S. 110, 116; *Land & Water Co.* v. *San Jose Ranch Co.*, 189 U. S. 177, 180. So that if Judge Earl's opinion had been adopted as the opinion of the Court of Appeals, it would have been clear that that court had considered and decided the federal questions.

In compliance with subdivision 2 of rule 8 of this court, the clerk of the New York Supreme Court was required to "annex to and transmit with the record a copy of the opinion or opinions filed in the case." This rule, by its terms, clearly included the opinion of the Supreme Court itself, particularly as such opinion is expressly referred to in the opinion of the highest court as affording great aid in reviewing the cases and as deciding in the first instance all the questions involved.

It is submitted that the language, and certainly the spirit, of rule 8 include the opinion of the court of original jurisdiction and require it to be sent up with the record (1) whenever such opinion is part of the record

in the appellate court under the statutes of the state, as it is in New York (N. Y. Code of Civil Procedure §17; 41st General Rule of Practice; *Kreiger* v. *Shelby Railroad Co.*, 125 U. S. 39, 44), or (2) whenever necessary to comprehend the questions passed upon by the appellate court and the scope of its judgment. Here, the highest court in its opinion expressly refers to the opinion of the court below and states that such opinion has aided it in reaching its conclusions and contains a consideration "of all the questions involved." Upon this point, the reasoning of Mr. Justice Curtis in *Neilson* v. *Lagow*, 12 How. 98, 109-110, seems quite pertinent, although used in a connection not exactly in point, viz.,

> "It has been settled, by a series of decisions in this court, beginning with *Miller* v. *Nichols*, 4 Wheat. 311, and coming down to *Smith* v. *Hunter*, 7 How. 738, that it must appear from the record that the highest court of the State passed on one of the questions described in the twenty-fifth section of the Judiciary Act; and different modes in which this may appear by the record are pointed out in *Armstrong* v. *The Treasurer of Athens Company*, 16 Peters, 281. It has never been held that the record of the proceedings of the highest court must state in terms a misconstruction by that court of the act of Congress. It is enough that it is an inference of law, from the inspection of the whole record, that the highest court did thus misconstrue an act of Congress, and annul a right or title, otherwise valid, by reason of such misconstruction. Any other rule, confining this court to an inspection of that part of the record which sets out the proceedings of the highest court alone, would be a departure from the

> general principle, that the whole of an instrument is to be looked at to determine the effect of each part of it, would present for decision an artificial and not a real case; and, inasmuch as the highest State court often simply affirms or reverses the judgment below, would, in all such cases, deprive the citizen of the rights secured to him by the Constitution and the twenty-fifth section of the Judiciary Act. And it has been the practice of this court, whenever necessary, to look at the record of the proceedings of the inferior State court in connection with the proceedings of the highest court, in order to deduce therefrom the points decided by the latter."

A reasonable and practical test would be whether or not the judgments in the present cases constitute *res adjudicata* as to the federal questions now presented under the Fourteenth Amendment. Suppose that in an action or proceeding involving the taxes for the next year, *i. e.*, 1901, the plaintiffs in error sought to raise the same federal questions decided by Judge Earl, would it not be insisted by the state that these questions had been litigated and decided in the present proceedings? *New Orleans* v. *Citizens' Bank*, 167 U. S. 371, 396; *Deposit Bank* v. *Frankfort*, 191 U. S. 499, 513. Would it not be asserted that the opinion of Judge Earl conclusively established this, even though the Court of Appeals had not expressly referred to these points? Or, in cases affecting other persons or corporations, could it reasonably be said that the decisions of the New York Supreme Court and Court of Appeals in the test cases at bar were not a direct precedent upon these very federal questions, and would not Judge Earl's opinion be urged as conclusive upon that point?

Under the circumstances of these cases, therefore, the court is at liberty to refer to the opinion of the inferior court for the purpose of determining whether or not the federal questions of due process and equal protection were duly raised, and upon such reference being made, it will appear that they were duly raised and decided against the plaintiffs in error and in favor of the validity of the statute. The jurisdiction of the court to review the decision would then seem to be clear under section 709 of the Revised Statutes.

CONCLUSION.

For the reasons discussed above, it is submitted that the statute in question impairs the obligations of the various contracts providing for payments in consideration of the grant of the franchises now assessed, and that it arbitrarily discriminates against the plaintiffs in error, thereby denying them the protection of equal laws and of due process. The judgments of the court below should, therefore, be reversed.

WASHINGTON, April 6, 1905.

WILLIAM D. GUTHRIE,
of counsel for plaintiffs in error in Nos. 74, 75 and 76.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

THE PEOPLE OF THE STATE OF NEW YORK ex rel. THE METROPOLITAN STREET RAILWAY COMPANY,
Plaintiff in error,
versus
THE STATE BOARD OF TAX COMMISSIONERS. — No. 74

THE PEOPLE OF THE STATE OF NEW YORK ex rel. THE TWENTY-THIRD STREET RAILWAY COMPANY,
Plaintiff in error,
versus
THE STATE BOARD OF TAX COMMISSIONERS. — No. 75

THE PEOPLE OF THE STATE OF NEW YORK ex rel. THE CENTRAL CROSSTOWN RAILROAD COMPANY,
Plaintiff in error,
versus
THE STATE BOARD OF TAX COMMISSIONERS. — No. 76

In error to the Supreme Court of the State of New York.

STATUTES AND RESOLUTIONS.

[18,995, 18,996, 18,997.]

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SPECIAL FRANCHISE TAX ACT.

An Act to amend the tax law, in relation to the taxation of public franchises as real property.

(Laws of 1899, Ch. 712, p. 1589.)

Became a law May 26, 1899, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Subdivision three of section two of the tax law is hereby amended to read as follows:

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting

steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

§ 2. Article two of the tax law is hereby amended by adding at the end thereof sections forty-two, forty three, forty-four, forty-five, forty-six and forty seven and to read as follows:

§ 42. *Assessment of special franchise.*—The state board of tax commissioners shall annually fix and determine the valuation of each special franchise subject to assessment in each city, town, village or tax district. Such board shall not less than ten nor more than thirty days next preceding the date when an annual assessment is required by law to be completed in any such city, town or village, file with the clerk of such city, town or village a written statement of the valuation of each special franchise in such city, town, village or tax district as fixed and determined by

such board; and the valuation so fixed, shall be the assessed valuation on which all taxes based on such special franchise in such city, town or village for state, municipal, school or highway purposes, shall be levied during the next ensuing year. The assessors or other taxing officer, or other local officer in any city, town or village, or any state or county officer, shall on demand furnish to the state board of tax commissioners any information required by such board for the purpose of determining the value of a special franchise. Each city, town or village clerk shall within five days after the receipt by him of a statement of assessment of a special franchise by the state board of tax commissioners, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments, in each tax district in such city, town or village. The valuation of a special franchise as so fixed by the state board of tax commissioners shall be entered by the assessors or other officers in the proper column of the assessment roll.

§ 43. *Report to state board of tax commissioners.*— Every person, co-partnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after this section takes effect, or within thirty days after such special franchise is acquired, make a written report to the state board of tax commissioners containing a full description of every special franchise possessed or enjoyed by such person, co-partnership, association or corporation, a copy of the special law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the state board. The state board of tax commissioners may from time to time require a further or supplemental report from any such person, co partnership, association or corporation, con-

taining information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the co-partnership making the same, to the effect that the statements contained therein are true. Such board may prepare blanks to be used in making the reports required by this section. Every person, co-partnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the state board of tax commissioners within a reasonable time specified by it, shall forfeit to the people of the state the sum of one hundred dollars for every such failure and the additional sum of ten dollars for each day that such failure continues, and shall not be entitled to review the assessment by *certiorari*, as provided by section forty-five of this chapter.

§ 44. *Hearing on special franchise assessment.*—On making an assessment of a special franchise, the state board of tax commissioners shall immediately give notice in writing to the person, copartnership, association or corporation affected, stating in substance that such assessment has been made, the total valuation of such special franchise, and the valuation thereof in each city, town, village or tax district; and that the board will meet at its office in the city of Albany on a day specified in such notice, which must not be less than twenty nor more than thirty days from the date of the notice, to hear and determine any complaint concerning such assessment. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation, by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence. Section thirty-six of this chapter applies so

far as practicable to a hearing by the state board of tax commissioners under this section.

§ 45. *Certiorari to review assessment.*—An assessment of a special franchise by the state board of tax commissioners may be reviewed in the manner prescribed by article eleven of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; except that a petition for a writ of *certiorari* to review the assessment must be presented within fifteen days after notice of the filing of the statement of the valuation of a special franchise with the clerk of the city, town or village, as prescribed by section forty-two of this chapter. Such writ must run to and be answered by said state board of tax commissioners and no writ of *certiorari* to review any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. An adjudication made in the proceeding instituted by such writ of *certiorari* shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. The state board of tax commissioners on filing with the city, town or village clerk a statement of the valuation of a special franchise, shall give to the person, copartnership, association or corporation affected written notice that such statement has been filed, and such notice may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence.

§ 46. *Deduction from special franchise tax for local purposes.*—If, when the tax assessed on any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible

property is located, it shall appear that the person, co-partnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, co-partnership, association, or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, shall be deducted from any tax based on the assessment made by the state board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, co-partnership, association, or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer authorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax roll to the person, copartnership, association or corporation affected the amount stated in such certificate, on any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village pur-

poses, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law.

§ 47. *Special franchise tax not to affect other tax.*—The imposition or payment of a special franchise tax as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property subject to a special franchise tax situated in, upon, under or above any street, highway, public place or public waters, as described in subdivision three of section two shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners.

§ 3. Sections twenty one and thirty-one of the tax law are hereby amended to read as follows:

§ 21. *Preparation of assessment roll.*—They shall prepare an assessment roll containing six separate columns and shall, according to the best information in their power, set down:

1. In the first column the names of all the taxable persons in the tax district.

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

3. In the third column the full value of such real property.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents and if payable in any other thing except money the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed

cannot be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

6. In the sixth column the value of the special franchise as fixed by the state board of tax commissioners.

§ 31. *Corporations how assessed.*—The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in, and of all of such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners.

§ 4. Subdivision six of section one hundred and seventy-one of the tax law is hereby amended to read as follows:

6. Employ a clerk, prescribe his duties and fix his salary at a sum not exceeding two thousand dollars, and also

other needed assistants, prescribe their duties and fix their compensation which shall not exceed in the aggregate the amount annually appropriated by the legislature for that purpose.

§ 5. Section thirty-seven of the tax law is hereby amended to read as follows:

§ 37. When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: "We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state board of tax commissioners, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief," which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

§ 6. This act shall take effect on the first day of October, eighteen hundred and ninety-nine.

TAX LAW.

(Laws of 1896, Chap. 908, p. 854.)

ARTICLE IX.

Corporation Tax.

Section 180. *Organization tax.*
181. *License tax on foreign corporations.*
182. *Franchise tax on corporations.*
183. *Certain corporations exempted from tax on capital stock tax.**
184. *Additional franchise tax on transportation and transmission corporations and associations.*
185. *Franchise tax on elevated railroads or surface railroads not operated by steam.*
186. *Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.*
187. *Franchise tax upon insurance corporations.*
188. *Tax upon foreign bankers.*
189. *Report of corporations.*
190. *Value of stock to be appraised.*
191. *Further requirements as to reports of corporations.*
192. *Powers of comptroller to examine into affairs of corporations.*
193. *Notice of statement of tax; interest.*
194. *Payment of tax and penalty for failure.*
195. *Revision and readjustment of accounts by comptroller.*
196. *Review of determination of comptroller by certiorari.*
197. *Regulations as to such writ of certiorari.*
198. *Warrant for the collection of taxes.*

* So in the original.

199. *Information of delinquents.*
200. *Action for recovery of taxes; forfeiture of charter of delinquent corporations.*
201. *Reports to be made by the secretary of state.*
202. *Exemptions from other state taxation.*
203. *Application of tax.*

SECTION 180. *Organization Tax.*—Every stock corporation incorporated under any law of this state shall pay to the state treasurer a tax of one eighth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the state treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this state until such tax shall have been paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to state and national banks or to building, mutual loan, accumulating fund and co-operative associations.

§ 181. *License Tax on Foreign Corporations.*—Every foreign corporation, joint stock company or association, except banking, fire, marine, casualty and life insurance companies, and corporations wholly engaged in carrying on manufactures in this state, co operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the state treasurer, for the use of the state, a license fee of one eighth of one per centum for the

privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital stock employed by it within this state during the first year of carrying on its business in this state. No action shall be maintained or recovery had in any of the courts in this state by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the state.

§ 182. *Franchise Tax on Corporations.*—Every corporation, joint stock company or association incorporated, organized or formed under, by or pursuant to law in this state, shall pay to the state treasurer annually, an annual tax to be computed upon the basis of the amount of its capital stock employed within this state and upon each dollar of such amount, at the rate of one-quarter of a mill for each one per centum of dividends made and declared upon its capital stock during each year ending with the thirty-first day of October, if the dividends amount to six or more than six per centum upon the par value of such capital stock. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, the tax shall be at the rate of one and one-half mills upon such portion of the capital stock at par as the amount of capital employed within this state bears to the entire capital of the corporation. If no dividend is made or declared, the tax shall be at the rate of one and one-half mills upon each dollar of the appraised capital employed within the state. If such corporation, joint stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum, upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon, amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon

the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged at the rate of one and one-half mills upon every dollar of the valuation made in accordance with the provisions of this act of the capital stock upon which no dividend was made or declared, or upon the par value of which the dividend or dividends made or declared did not amount to six per centum. Every corporation, joint stock company or association organized, incorporated or formed under the laws of any other state or country, shall pay a like tax for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, to be computed upon the basis of the capital employed by it within this state.

§ 183. *Certain corporations exempt from tax on capital stock.*—Banks, saving banks, institutions for savings, insurance or surety corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations wholly engaged in mining ores within the state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas or for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. This exemption shall not be construed to include title guaranty or trust companies.

§ 184. *Additional franchise tax on transportation and transmission corporations and associations.*—Every corporation and joint-stock association formed for steam surface railroad, canal steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other

transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter, shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originated and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlements for such taxes heretofore based by the comptroller upon gross earnings excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section six of chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

§ 185. *Franchise tax on elevated railroads or surface railroads not operated by steam.*—Every corporation, joint-stock company or association operating any elevated railroad or surface railroad not operated by steam shall pay to the state for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this state, an annual tax which shall be one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid up capital employed by such corporation, joint-stock company or association. Any corporation, joint-stock company or association taxed under this section which has paid a tax to the state for the year ending November first, eighteen hundred and ninety-five, under section three of chapter five hundred

and forty-two of the laws of eighteen hundred and eighty, as amended by chapter five hundred and twenty-two of the laws of eighteen hundred and ninety, shall be credited by the comptroller with one-third of the amount so paid in computing the taxes to be paid for the year ending June thirtieth, eighteen hundred and ninety-six.

§ 186. *Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.*—Every corporation, joint-stock company or association formed for supplying water or gas, or for electric or steam heating, lighting or power purposes, shall pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual tax which shall be five tenths of one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association.

§ 187. *Franchise tax upon insurance corporations.*—Every insurance or surety corporation doing business in this state shall annually pay a tax into the treasury of the state for the privilege of exercising its corporate franchises in this state, at the rate of five-tenths of one per centum upon the gross amount of premiums received for business done in this state by such company or association, person or partnership whether such premiums were in the form of money, notes, credits or any other substitute for money. Life insurance corporations and purely mutual benefit associations, whose funds for the benefit of members, their families or heirs, are made up entirely of contributions of their members and the accumulated interest thereon, shall be exempt from the tax fixed by this section. The term "insurance corporation," as used in this article, shall include all persons and partnerships doing an insurance business in this state.

§ 188. *Tax upon foreign bankers.*—Every foreign banker doing business in this state, shall annually pay to

the treasurer a tax of one-half of one per centum on his business done in this state, to be ascertained as follows: By first computing the daily average, for each month, of the moneys outstanding upon loans and of all other moneys received, used or employed in connection with its or their business done in this state, by such banker, and by then dividing the aggregate of such monthly averages by the number of months for which such banker shall, during the year preceding, having been engaged in the business of banking in this state. The term, doing a banking business, as used in this section, means doing any such business as a corporation may be created to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership or association, of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one half of the net assets thereof, are not residents of this state.

4. Every non-resident of this state, doing a banking business in this state, in his own name and right only.

§ 189. *Reports of corporations.*—Corporations liable to pay a tax under this article shall report as follows:

1. *Corporations paying franchise tax.*—Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its

condition at the close of its business on October thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this state during such year.

2. *Transportation and transmission corporations.*—Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this state.

3. *Elevated and surface railroad corporations.*—Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. *Water-works, gas, electric, steam heating, lighting and power corporations.*—Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this state, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the

authorized capital of the company and the amount of capital stock actually issued and outstanding.

5. *Insurance corporations.*—Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the entire amount of premiums received on business done thereby in this state during the year ending with such day, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

6. *Foreign bankers.*—Every foreign banker liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required by the last preceding section for the purpose of ascertaining and computing the same.

§ 190. *Value of stock to be appraised.*—In case no dividend has been declared, by a corporation, association or joint stock company liable to pay a tax under section one hundred and eighty-two of this chapter, the treasurer or secretary of the company shall, under oath, between the first and fifteenth day of November in each year, estimate and appraise the capital stock of such company upon which no dividend has been declared, or upon which the dividend amounting to less than six per centum at its actual value in cash, not less, however, than the average price which said stock sold for during said year, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the state.

§ 191. *Further requirements as to report of corporations.*—Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint stock company or of the persons or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

§ 192. *Powers of comptroller to examine into affairs of corporations.*—In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the state from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken, and the

result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the state, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

§ 193. *Notice of statement of tax; interest.*—Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated shall bear interest upon the total amount found due thereon to the state, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

§ 194. *Payment of tax and penalty for failure.*—A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty five, on elevated railroads or surface railroads not operated by steam, or by section one hundred and eighty-seven of this chapter on an insurance corporation, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty eight of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article,

the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the state treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, asociation, joint-stock company, person or partnership failing to make the annual report required by this article or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

§ 195. *Revision and readjustment of accounts by comptroller.*—The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demnded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts, and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person partnership, company, association or corporation. The comptroller shall forthwith send written notice of its determination upon such application to the applicant, which notice may be sent by mail to his post office address.

§ 196. *Review of determination of comptroller by certiorari.*—The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the supreme court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the state. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the supreme court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the supreme court upon any such review, on appeal to the court of appeals may be taken by either party.

§ 197. *Regulations as to such writ of certiorari.*—No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account must be deposited with the state treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the supreme court shall approve to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

§ 198. *Warrant for the collection of taxes.* After the expiration of thirty days from the sending by the comptroller of a notice of a statement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the state treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the state, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the state treasurer the money collected by virtue thereof, by a time to be therein specified, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all respects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

§ 199. *Information of delinquents.* It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the state, with such information as may be in his possession as may lead to the recovery of any taxes due the state therefrom. If, in his opinion, the interests of the state require it, the comp-

troller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person by reason of such report and such services, as shall have been agreed upon between such persons and the comptroller or attorney general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

§ 200. *Action for recovery of taxes; forfeiture of charter of delinquent corporation.*—An action may be brought by the attorney-general, at the instance of the comptroller, in the name of the state, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in the name of the people of the state, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its frachise and for its dissolution, and thereafter such franchise shall be annulled.

§ 201. *Reports to be made by the secretary of state.*—The secretary of state shall transmit on the first day of each month to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this state, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and

places of residence of its directors, and, if a foreign corporation, its place of business within the state. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make like reports to the comptroller whenever required by him relating to such corporations, whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

§ 202. *Exemptions from other state taxation.*—The personal property of every corporation, company, association or partnership taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article.

§ 203. *Application of taxes.*—The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

EXTRACTS FROM GREATER NEW YORK CHARTER (1897)

Showing Manner in which Assessments were levied in New York City in 1900 upon Real and Personal Property other than Special Franchises.

(Laws of 1897, Vol. 3, pp. 315 *et seq.*)

CHAPTER XVII.

Taxes and Assessments.

Title 1. *Department of taxes and assessments; powers and duties.*
2. *Assessments for local improvements other than those confirmed by a court of record.*
3. *Vacating and modifying assessments for local improvements other than those confirmed by a court of record.*
4. *Opening streets and parks.*
5. *Sales of lands for taxes, assessments and water rates.*

TITLE 1.

DEPARTMENT OF TAXES AND ASSESSMENTS, POWERS AND DUTIES.

One of the Departments of the City.

SECTION 884. The department of taxes and assessments shall be one of the departments in said city.

Department, how Composed; Term and Salaries.

§ 885. The head of the department of taxes and assessments shall be called the board of taxes and assessments. Said board shall consist of a president, who shall be designated in his appointment, and four other persons, one of whom at least shall be a person learned in the law, who shall be called commissioners of taxes and assessments. The president, unless sooner removed, shall

hold his office for the term of six years, and until his successor shall be appointed and has qualified. The other commissioners shall, unless sooner removed, hold their respective offices for the term of four years, and until their successors shall be appointed and have qualified. The commissioners first appointed under this act shall hold office by designation of the mayor for terms of one, two, three and four years, respectively. The commissioners thereafter appointed shall hold office for the term of four years. The salary of the president shall be eight thousand dollars a year, and the salary of each of the other commissioners seven thousand dollars a year.

Devolution of Power.

§ 886. All of the rights, powers and duties heretofore devolved by law upon the board of taxes and assessments in the city of New York, upon the department of assessment of the city of Brooklyn, and upon like departments, boards or officers of taxes and assessments other than for street improvements in the other municipal and public corporations or parts of municipal and public corporations consolidated by this act with the municipal corporation known as the mayor, aldermen and commonalty of the city of New York are hereby devolved, unless otherwise herein expressly provided, upon and vested in the board of taxes and assessments in The City of New York.

Deputy Tax Commissioners; how Appointed; Their Duties, Term of Office and Salary.

§ 887. The board of taxes and assessments shall appoint persons to be known as deputy tax commissioners, not exceeding forty in number, who shall perform, under the direction and supervision of the board of taxes and assessments, such duties as the said board shall prescribe. The said board shall give such directions to the deputy tax commissioners as it shall think expedient to secure in all the boroughs and parts of the city equality of valuations of property for the purposes of taxation. Such

deputy tax commissioners shall hold their office during the pleasure of the said board of taxes and assessments, and shall be subject to removal by the said board as deputities in the other city departments. The number of deputy tax commissioners above prescribed may from time to time be increased by the appointment of the board of taxes and assessments, provided such increase is authorized by the board of estimate and apportionment. The salary of each of said deputy tax commissoners shall be fixed by the board of taxes and assessment.

Apportionment of Deputy Tax Commissioners Among the Boroughs.

§ 888. In making the appointments of the deputy tax commissioners the head of the department of taxes and assessments shall apportion such appointments as nearly as may be, among persons residing in the several boroughs created by this act, according to the population of the several boroughs; and the persons performing similar duties in the several boroughs, when this act takes effect, shall, so far as the board shall deem them fit and competent, be preferred for the said appointments first to be made hereunder.

Deputy Tax Commissioners; Duties of in Assessing Taxable Property.

§ 889. It shall be the duty of the deputy tax commissioners, under the direction of the board of taxes and assessments, to assess all the taxable property in the several districts that may be assigned to them for that purpose by said board, and they shall furnish to the said board, under oath, a detailed statement of all such property, showing that said deputies have personally examined each and every house, building, lot, pier, or other assessable property, giving the street, lot, ward, town and map number of such real estate embraced within said districts, together with the name of the owner or occupant, if known; (also, in their judgment, the sum for

which said property under ordinary circumstances would sell), with such other information in detail relative to personal property or otherwise, as the said board may, from time to time require. Such deputies shall commence to assess real and personal estate on the first Tuesday of September in each and every year.

Offices of the Department in the Boroughs.

§ 890. There shall be an office of the department of taxes and assessments in the borough of Brooklyn, a like office of the department in the borough of Queens, a like office of the department in the borough of Richmond, and a like office of the department in the borough of The Bronx; at which the duties of the department of taxes and assessments pertaining to the assessment of property in the said several boroughs shall, under the direction of the board of taxes and assessments, be performed by such number of the deputy tax commissioners or other employees of the department of taxes and assessments as the said department may decide to be necessary and assign to such duties. Such offices shall in law be a part of the main office, the main office of the department of taxes and assessments shall be maintained in the borough of Manhattan. The books, maps, assessment-rolls, files and records pertaining to the department of taxes and assessments of the municipality heretofore designated as the mayor, aldermen and commonalty of the city of New York, of the department of assessment of the city of Brooklyn and of each and every of the like offices in any of the municipal and public corporations, or parts of municipal and public corporations consolidated by this act with the municipal corporation of the mayor, aldermen and commonalty of the city of New York, shall be delivered into and thereafter be in the custody and control of the department of taxes and assessments hereby constituted, to be kept in such of the offices of the said department as may be most convenient to the taxpayers and suitable to the proper discharge of the busi-

ness of such department, and shall be public records, and at all reasonable times open to public inspection.

Surveyor.

§ 891. The said department of taxes and assessments shall appoint a surveyor from one of the city surveyors, whose duty it shall be to make necessary surveys and corrections of the ward maps, and also to make all new maps which may be required for the more accurate assessment of real estate within the territory consolidated by this act with the municipal corporation known as the mayor, aldermen and commonalty of the city of New York. He shall hold his office at the pleasure of the department of taxes and assessments, and may have such assistants as the said department may decide to be necessary and provide.

Annual Record of Assessed Valuation; What to Contain and When to be Open for Examination and Correction.

§ 892. There shall be kept in the several offices established by the department of taxes and assessments, books to be called "The annual record of the assessed valuation of real and personal estate of the borough of ," in which shall be entered in detail the assessed valuations of such property within the limits of the several boroughs of the City of New York, as established by this act, which said books shall be open for examination and correction from the second Monday in January until the first day of May, in each year; but on said last mentioned day the same shall be closed to enable the board of taxes and assessments to prepare assessment rolls of the several boroughs for delivery to the municipal assembly. The said board previous to and during the time the said books are open as aforesaid for inspection, shall advertise the fact in the City Record, and in the corporation newspapers and in such other newspaper or newspapers published in the several boroughs created by

this act as may be authorized by the board of city record; provided, however, that for the year eighteen hundred and ninety-eight it shall be sufficient if said books be kept open from the first Monday of February to the first day of May of that year.

Annual Record of Assessed Valuation of Real and Personal Estate of Corporations to be Kept in Main Office.

§ 893. The department of taxes and assessments shall cause to be prepared and kept in the main office of the department of taxes and asses-ments, books to be called "The annual record of the assessed valuations of real and personal estate of corporations," and it shall be the duty of the deputy tax commissioners in the several districts in the several boroughs which may be assigned to them for that purpose by the board of taxes and assessments, to furnish to the department of taxes and assessments, under oath at their main office, at the time that such statement is filed in any office of the department of taxes and assessments in any borough other than in the main office in the borough of Manhattan, a duplicate detailed statement of the assessable property of corporations, both real and personal, which said statements of said deputy tax commissioners shall be entered upon the books to be kept in the main office of the department of taxes and assessments, to be known as the "Annual record of the assessed valuation of real and personal estate of corporations."

Assessed Valuation of Personal Property; how to be Entered.

§ 894. The assessed valuation of all personal property shall be entered by said deputy tax commissioners, or by such other persons as may be assigned to that duty by the department of taxes and assessments in its several offices, in books or rolls, in alphabetical order, of the names of persons and corporations subject to taxation. No tax or assessment shall be void by reason of the name

of the rightful owner or owners, whether individuals or corporations, of real estate in any of the said boroughs not being inscribed in the assessment rolls or lists; but in such case no tax shall be collected except from the real estate so assessed. The assessed valuation of all real and personal property of corporations shall be entered in duplicate in the office in the borough where the same is assessed and in the main office of the department of taxes and assessments in the borough of Manhattan.

This section was amended by Laws of 1899, ch. 500, page 1034, by adding the following:

> "If, at any time prior to the first day of May in any year, it shall appear to the tax commissioners that a person assessed for taxation on personal estate on the books or rolls of one borough should have been assessed therefor on the books or rolls of another borough, they shall forthwith cause the assessment to be cancelled and a new assessment to be made on the proper books or rolls, and within five days thereafter shall cause written notice of the new assessment to be mailed to such person at his last known residence or business address within the city of New York, and an affidavit of the mailing of such notice to be filed in the main office. The person so notified may apply for correction of such assessment on or before the twentieth day of May, with the same force and effect as if such application were made on or before the thirtieth day of April, in any year.

Application for Correction of Assessment.

§ 895. During the time that books shall be open to public inspection as aforesaid, application may be made by any person or corporation claiming to be aggrieved by the assessed valuation of real or personal estate, to have the same corrected. If such application be made in relation to the assessed valuation of real estate, it must be made in writing, stating the ground of objection thereto. The board of taxes and assessments shall examine into

the complaint, as herein provided, and if in their judgment the assessment is erroneous they shall cause the same to be corrected. If such application be made in relation to the assessed valuation of personal estate, the applicant shall be examined under oath by a commissioner of taxes and assessments or a deputy tax commissioner, as herein provided, who are hereby authorized to administer such oath, and if the assessment as hereinafter provided be determined by the board of taxes and assessments to be erroneous, it shall cause the same to be corrected, and fix the amount of such assessment as the board of taxes and assessments may believe to be just, and declare its decision upon such application within the time and in the manner hereinafter provided. But the commissioners of taxes and assessments may, during the month of May in any year, act upon applications for the reduction of assessments upon either real or personal property filed in their offices on or before the thirtieth day of April preceding, and cause the amount of any assessment as corrected by the board of taxes and assessments to be entered upon the assessment-rolls for the year in which such correction may be made.

When Assessed Valuation may be Increased or Diminished.

§ 896. The board of taxes and assessment may increase at any time before the first day of May in each year, or may diminish at any time before the closing of the books of "Annual Record," on the first day of May in each year, the assessed valuation of any real or personal estate of any individual or corporation, as in its judgment may be just or necessary for the equalization of taxation; but it shall not increase such valuations of the property of any individual or corporation after said books are opened for correction and review, except upon notice given to the individual or corporation affected by such increase at least ten days before the fifteenth day of May in each year.

Power of the Board to Remit or Reduce a Tax.

§ 897 The board of taxes and assessments is hereby invested with power to remit where in the opinion of the corporation counsel lawful cause therefor is shown. It may reduce if found excessive, a tax imposed upon real or personal property. It shall require a majority of the commissioners of taxes and assessments to remit or reduce the assessed valuation of personal property, and no tax on personal property shall be remitted, cancelled or reduced unless the person aggrieved shall satisfy the board of taxes and assessments that illness or absence from the city had prevented the filing of the complaint or making the application to the said board within the time allowed by law for the correction of taxes. Any remission or reduction of taxes upon the real estate of individuals or corporations must be made within six months after the delivery of the books to the receiver of taxes for the collection of such tax.

Applications for Revision and Cancellation of Assessment in the Several Boroughs; When and how Made.

§ 898. The board of taxes and assessments from the whole number of persons appointed as deputy tax commissioners shall for each of the boroughs wherein one of the offices of the department of taxes and assessments is established and maintained, designate one or more deputy tax commissioners, who shall, between the second Monday of January in each year and the first day of May following, receive applications for the revision and cancellation of any assessments entered in the books of annual record of the assessed valuation of real and personal estate in that borough, take testimony on such applications and reduce the same to writing, and when so reduced to writing transmit such applications and testimony, with his recommendation, to the board of taxes and assessments at their main office, in the borough of Manhattan, or to any office of the department of taxes in any borough as the board of taxes and assessments may

prescribe. Such deputy tax commissioners as may be designated for the purposes and as prescribed in this section, are hereby authorized between the second Monday of January and the first day of May to administer oaths for the purpose of taking testimony upon all applications for the revision or cancellation of assessments, and they are hereby required and directed to transmit the evidence so taken and reduced to writing, within ten days after the evidence upon any application is taken, with their recommendation, as hereinbefore described. The board of taxes and and assessments shall hear at their main office all applications of corporations for revision and cancellation of assessments; and as to all other applications, the said board may prescribe the time and place of hearing thereof in the several boroughs and give such public notice thereof in the City Record and in at least one newspaper in each borough as they may designate, and the board may make such rules and regulations as may be appropriate and expedient to the end that the taxpayers of each borough other than corporations, may have a hearing in the borough in which they reside or in which their property assessed is situated. All testimony taken by the board of taxes and assessments by any commissioner or by deputy tax commissioners as herein prescribed, shall be reducted to writing and shall constitute part of the record of the proceedings upon any assessment. The decision of the board of taxes and assessments, upon any application for the revision, reduction or cancellation of any assessment and upon the evidence taken thereunder, shall, where the evidence is taken by the board of taxes and assessments be rendered within thirty days after the hearing upon such application is closed. And where the evidence upon any application is taken by any commissioner or a deputy tax commissioner, the determination of the board of taxes and assessments shall be rendered within thirty days after the application and the testimony thereunder shall have been filed with the board of taxes and assessments, at the main office of the department in the borough of Manhattan.

Deputy Tax Commissioners to Make up Aggregate Amount of Assessed Valuation in the Boroughs.

§ 899. It is hereby declared to be the duty of the deputy tax commissioner, or of such other persons as may have been assigned to the charge and direction of any one of the offices of the department of taxes and assessments in the several boroughs, to compute from the annual record of the assessed valuations of real and personal estate in each of the said several offices, the total aggregate amount of the assessed valuation of real and personal property appearing on said books for each of the said boroughs on the second Monday of January in any year, and to transmit a statement of such aggregate amounts of assessed valuations of real and personal property in the said several boroughs to the department of taxes and assessments at their main office in the borough of Manhattan on or before the second Monday of January in each year. The board of taxes and assessments are hereby invested with the power and charged with the duty before opening the books for the public inspection as herein prescribed, to fix such valuations of property for the purposes of taxation throughout The City of New York at such sums as will, in their judgment, establish a just and equal relation between the valuations of property in each borough and throughout the entire city. To this end the board of taxes and assessments is authorized to require the deputy tax commissioners to transmit a report to them of the assessed valuation of real and personal property in the several boroughs at such time prior to the second Monday of January in each year as the board of taxes and assessments may prescribe.

Comptroller to Submit to Municipal Assembly a Statement Showing the Amounts Necessary to be Raised.

§ 900. It shall be the duty of the comptroller of said city to prepare and submit to the municipal assembly, at

least four weeks before its annual meeting in each and every year for the purpose of imposing the annual taxes, a statement setting forth the amounts by law authorized to be raised by tax in that year, on account of the corporation of *The City of New York*, as hereby constituted, or for city purposes within said city as created by this act, and purposes for which said city is liable, and also an estimate of the probable amount of receipts into the city treasury during the then current year from all the sources of revenue of the general funds, including surplus revenue from the sinking funds of the mayor, aldermen and commonalty of the city of New York and of any of the municipal and public corporations, or parts of municipal and public corporations, by this act consolidated with the municipal corporation known as the mayor, aldermen and commonalty of the city of New York, other than the surplus of revenues of any such sinking funds for the payment of interest on the city debt of the municipal corporation known as the mayor, aldermen and commonalty of the city of New York, or the like debts of the municipal and public corporations by this act consolidated as aforesaid, and the said municipal assembly is hereby authorized and directed to deduct the total amount of such estimated receipts from the aggregate amount of all the various sums which, by law, they are required to order and cause to be raised by tax in said year, for the purposes aforesaid, and to cause to be raised by tax only the balance of such aggregate amount after making such deductions.

Special Provision for Taxes of 1897-1898.

§ 901. Inasmuch as the amounts due in the way of taxes for state and municipal purposes for the year eighteen hundred and ninety-eight will have been levied in the boroughs of Brooklyn, Queens and Richmond, prior to the first day of January, eighteen hundred and ninety-eight, but not in the city of New York, now, in order to prevent double taxation of property outside of the limits of the present city of New York, for the year eighteen

hundred and ninety-eight, it is hereby provided that in said year eighteen hundred and ninety-eight the balance so caused to be raised by tax shall be raised exclusively from property within the limits of the corporation heretofore known as the mayor, aldermen and commonalty of the city of New York; but it is further provided that in case it shall transpire that the amount levied or collected from any borough outside of the present city of New York, and available to the uses of the city, as constituted by this act, for the year eighteen hundred and ninety-eight, shall be more or less than its due proportion of the expenses for the year eighteen hundred and ninety-eight of the city as constituted by this act, such excess or deficit shall be equalized and adjusted in the budget of the following year; to the end that each borough shall bear its fair proportion of the expenditures of the city for the year eighteen hundred and ninety-eight. The municipal assembly shall have full power, by appropriate ordinances, to enforce this provision, and is hereby invested with power to make such equalization and adjustment by different rates of taxation, or otherwise, in the several boroughs, to the end that taking the years eighteen hundred and ninety-eight and eighteen hundred and ninety-nine, together, each borough shall pay its proper proportion of the general expenses of the city for both years.

How County Charges and Expenses in New York, Kings and Richmond Counties and that Part of Queens County Within the City are to be paid.

§ 902. In the statement submitted by the comptroller to the municipal assembly as above provided in this chapter, he shall each year include and state specifically the sum or sums necessary to be raised to pay during the current year the salaries of the county officers and the other county charges and expenses in the counties of New York, Kings, and Richmond, respectively, and the sum or sums which should be paid for like purposes by that part

of Queens county included within the city; and the municipal assembly is hereby authorized and directed to levy upon and collect from the taxable property within each of said counties and part of county, respectively, the sum or sums so necessary to be raised to pay the salaries of county officers and other county charges and expenses of such county or part of county; to the end that each of said counties and said part of Queens county shall ultimately bear and pay all expenses necessary to be incurred within the county or part of county for county as distinguished from city purposes.

Permit for Buildings, etc.; Copies of to be Sent to the Department of Taxes and Assessments.

§ 903. Whenever any permit shall be granted by the proper officer of the city government as created by this act for the erection of any building, pier or bulkhead within said city, a copy of such permit shall be within five days after its issue furnished by the officer granting the same to the department of taxes and assessments.

Exemptions.

§ 904. The exemption from taxation of every building for public worship, and every schoolhouse or other seminary of learning under the provisions of section four of the tax law, being chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, shall not apply to any such building or premises within the limits of The City of New York, as defined by this act, unless the same shall be exclusively used for such purposes, and be exclusively the property of a religious society.

Exemptions, Continued.

§ 905. Nothing in this chapter shall affect any existing and valid exemptions from taxation heretofore created by law respecting any property, real or personal, within the limits of The City of New York, as constituted by this act.

Certiorari to Review Final Determination of the Department.

§ 906. A certiorari to review or correct on the merits any final determination of the board of taxes and assessments shall be allowed by the supreme court or any justice thereof directed to the commissioners of taxes and assessments on the verified petition of the party aggrieved, but only on the grounds which must be specified in such petition, that the assessment is illegal, and giving the particulars of the alleged illegality, or is erroneous by reason of over valuation, or in case of real estate, that the same is erroneous by reason of inequality, in that the assessment has been made at a higher proportionate valuation than the assessment of other real estate on the tax rolls of the city for the same year, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby.

When Assessment-Rolls to be Made and Delivered to the Municipal Assembly.

§ 907. Beginning with the first day of May in each year the board of taxes and assessments shall cause to be prepared from the books of annual record of assessed valuations of real and personal estate in the several offices of the department of taxes and assessments in the several boroughs, assessment-rolls for each of said several boroughs, and shall, as soon as such rolls are completed, annex to each of said rolls their certificates that the same is correct in accordance with the entries in said several books of record. The rolls so certified must, on the first Monday of July in each year be delivered by the board of taxes and assessments to the municipal assembly, which shall meet at noon on that day at the city hall, or usual place of meeting, in the borough of Manhattan, for the purpose of receiving the same, and for the purpose of performing such other duties in relation thereto as are prescribed by law; except that whenever said first Monday in July shall fall on a legal holiday, said rolls shall be

delivered by said board of taxes and assessments on the next succeeding day thereafter to the municipal assembly, which shall meet at noon on such next succeeding day, at the place and in the manner and for the purposes hereinafter specified.

Meaning of the Words "Board of Taxes and Assessments" in This Chapter; Majority Clause.

§ 908. Whenever any act is required or authorized to be done or any determination or decision made by the board of taxes and assessments, or any other body or board, then in the absence of express provision to the contrary, any such act, if done, or any such determination or decision, if made by a majority of the body or board shall, within the meaning of this act be held to be the act, determination or decision of the body or board.

Assessment-Rolls to Remain in Custody of Municipal Assembly.

§ 909. The tax or assessment-rolls, when finally submitted to the municipal assembly on the first Monday of July in each year, shall remain in the custody of said assembly, but the president of the council may by written permission, permit access to them, and he is hereby, in the name of the municipal assembly and as its act, authorized and directed to cause to be properly estimated and computed the taxes annually imposed, and cause the same to be properly set down or extended in the several assessment-rolls or tax books, as required by the next section. It shall also be the duty of said president to cause the items of said taxes to be carefully added, and to set down the amount of the same therein; and when completed to deliver the tax books relating to real estate to the collector of assessments and arrears, in order that the unpaid water rents of each preceding year may be entered therein. After such completion of the assessment-rolls or tax books it shall be the duty of the city clerk to procure the proper warrants authorizing and requiring the receiver of taxes to collect the several sums therein mentioned according to law, and such warrants

need be signed only by the president of the council and the president of the board of aldermen and countersigned by the city clerk, and immediately thereafter the president of the council shall deliver the said assessment-rolls, with the warrants aforesaid annexed thereto, to the receiver of taxes, at the same time notifying the comptroller of the amount of taxes in each book, in order that he may cause the proper sum to be charged to the receiver for collection.

Id.; Duties of Municipal Assembly Respecting.

§ 910. At such annual meeting the municipal assembly must make such alterations in the description of real property belonging to non-residents as may be necessary to render such descriptions conformable to the provisions of law; and if such alterations can not be made, they must expunge the descriptions of such real property, and the assessment thereon from the assessment-rolls. They must also estimate and set down in a fifth column, to be prepared for that purpose in the assessment-rolls, opposite to the several sums set down as the valuation of real and personal property, the respective sums, in dollars and cents, to be paid as a tax thereon, rejecting the fractions of a cent. They must also add up and set down the aggregate valuations of the real and personal property in the several boroughs as corrected by them; and must transmit to the comptroller of this state by mail a certificate of such aggregate valuations, showing separately the aggregate amount of the real and personal property in each borough, as corrected by the municipal assembly.

Corrected Roll to be Delivered to Receiver of Taxes.

§ 911. They must also cause the assessment rolls of each borough, when corrected according to law, and finally completed, or a fair copy thereof, to be delivered to the receiver of taxes in and for the city on or before the first day of September thereafter, with the proper warrant or warrants annexed, signed by the president of the council and the president of the board of aldermen and countersigned by the city clerk, directing and requiring him to col-

lect from the several persons named in the assessment-rolls the several sums mentioned in the last column of such roll, opposite to their respective names, and to pay the same from time to time, when so collected, to the chamberlain of the city.

Penalty for Municipal Assembly's Neglect.

§ 912. If the municipal assembly shall willfully refuse or neglect to perform any of the duties required of them by the two preceding sections, each member so refusing or neglecting shall forfeit to The City of New York the sum of five hundred dollars, to be recovered in a civil action; and shall also be punishable for a misdemeanor, and upon conviction thereof, shall forfeit his office.

Where Taxes Due and Payable.

§ 913. The receiver of taxes upon receiving the assessment-rolls and warrants shall immediately cause the assessment-rolls and warrants for each of the several boroughs wherein he shall, under the designation of the municipal assembly, have an office, to be delivered at and filed in such office, and shall thereafter proceed to collect and receive said taxes from the several individuals and corporations assessed in the said assessment-rolls in the manner hereinafter prescribed.

Receiver of Taxes to Give Public Notice.

§ 914. The receiver of taxes shall, immediately after he shall have received the assessment-rolls, give public notice in the City Record and the corporation newspapers and in such newspaper or newspapers published in the several boroughs as may be designated by the board of city record, or in default of any newspaper being published in any borough, in such newspaper or newspapers having a general circulation in such borough as the board of city record shall direct, that said assessment-rolls have been delivered to him and that all taxes are then due and payable at his office in the said respective boroughs, and and that in case of payment on or before the first day of November thereafter the persons so paying shall be entitled to the benefits mentioned in the next section.

Rebate for Prompt Payment.

§ 915. If any person who shall be assessed in any of the said assessment rolls shall pay the amount of his taxes on or before the first day of November, succeeding the delivery of the said assessment rolls and warrants to the said receiver, it shall be the duty of the receiver or any of his deputies to receive the same, and to deduct therefrom interest, at the rate of six per centum per annum, between the day of such payment and the first day of December then next succeeding.

Interest on Unpaid Taxes.

§ 916. If any such tax shall remain unpaid on the said first day of December, it shall be the duty of the receiver of taxes to charge, receive, and collect upon such tax so remaining unpaid on that day, in addition to the amount of such tax, one per centum on the amount thereof, and to charge, receive, and collect upon such tax, so remaining unpaid on the first day of January thereafter, interest upon the amount thereof, at the rate of seven per centum per annum, to be calculated from the day on which said assessment rolls and warrants shall have been delivered to the receiver of taxes to the date of payment; and such increase or percentage shall be paid over and accounted for by such receiver from time to time, as a part of the tax collected by him.

Id.; Continued.

§ 917. It shall be the duty of the said receiver, in person or by his deputies, to charge, collect, and receive upon all taxes remaining unpaid on and after the said first day of January, interest at rate of seven per centum per annum, to be calculated from the day on which the said assessment rolls and warrants have been delivered to the receiver.

Duty of Receiver Where Taxes Remain Unpaid on the First of November Following the Delivery of Assessments and Warrants.

§ 918. If any taxes of any year shall remain unpaid on the first day of November next after the assess-

ments and warrants to collect such taxes have been delivered to the receiver of taxes at his office in the borough of Manhattan, it shall be the duty of the receiver to give notice by advertisement for at least ten days in the City Record and the corporation newspapers, and in such daily paper having a general circulation in any borough as the board of city record shall designate, that unless the same shall be paid to him at his office on or before the first day of December in any such year, he will immediately thereafter proceed to collect such unpaid taxes as provided herein.

Public Notice to be Given by Receiver After December First in Each Year.

§ 919. The receiver of taxes shall immediately after the first day of December, in each year, give public notice in the City Record, and the corporation newspapers, and in such daily paper having a general circulation in any borough as the board of city record may designate, at least ten days, notifying all persons or corporations who have omitted to pay their taxes to pay the same to him at his office in the borough of Manhattan, or to his several deputies in the several boroughs.

Undivided Parts of Taxes; Payment of

§ 920. If a sum of money in gross has been or shall be taxed upon any lands or premises, any person or persons claiming any divided or undivided part thereof may pay such part of the sum of money so taxed, also of the interest and charges due or charged thereon, as the said comptroller may deem to be just and equitable; and the remainder of the sum of money so taxed, together with the interest and charges, shall be a lien upon the residue of the land and premises only, which residue may be sold to satisfy the residue of such tax, interest, or charges, in the same manner as though the residue of said tax had been imposed upon the residue of said lands or premises.

Corporations; Tax for, how Collected.

§ 921. The said receiver of taxes shall proceed in enforcing the collection and payment of taxes against cor-

porations or associations and their officers and directors, or trustees, in the same manner as against individuals; such taxes shall be paid out of the funds of the company and shall be ratably deducted from the dividends of those stockholders whose stock was taxed, or shall be charged upon such stock, if no dividends be afterward declared.

Daily Statement of Taxes Received to be Rendered to Chamberlain.

§ 922. The receiver of taxes shall enter into suitable books, to be kept by him for that purpose, the sums received by him for taxes, and at the expiration of the office hours for each day, and before three o'clock thereof, shall render a statement of the same to the chamberlain and at the same time on each day pay over to said chamberlain the amount received on such day; he shall also thereupon receive from the said chamberlain a voucher for the payment of such sums, which he shall forthwith, on the same day, exhibit to the comptroller of the said city. But the duty by this section imposed may, in respect to the borough of Brooklyn, be discharged by the deputy receiver of taxes and the deputy chamberlain located in the borough of Brooklyn, and likewise by similar deputy officers for the borough of The Bronx, the borough of Queens, and the borough of Richmond.

Receiver's Account of Taxes Received; how to be Kept.

§ 923. It shall be the duty of the receiver, and of deputy receivers, from time to time to enter in a column, to be made for that purpose, upon the assessment-rolls in his possession, opposite to the names of the persons mentioned therein, and who shall pay their tax, as aforesaid, to the receiver of taxes, personally or by deputy, the fact of such payment, the amount thereof, and the day when paid, and to enter into suitable books, to be kept for that purpose, on each day such payment, and the names of the parties respectively on whose account the same were paid; and at the expiration of the office hours, and on the same day, he shall furnish to the comptroller of the said city, personally or by deputy, a detailed statement of such

sums of the borough for which received, and the names of the parties respectively on whose account the same have been paid, which shall be filed by the said comptroller in his office. The comptroller shall, on each day, immediately after receiving from said receiver or deputy the statement, compare the same with a voucher furnished to him by the chamberlain for the payment thereof to the chamberlain, and if the aggregate amounts thereof shall correspond, shall credit the said receiver of taxes in his book with such amount.

Penalty for Failure to Report to Chamberlain.

§ 924. If the receiver of taxes, or any deputy receiver shall on any day, omit or neglect to furnish to the chamberlain or to the comptroller, respectively, the statements and vouchers required by law, or to make the daily payments hereinbefore prescribed, it shall be the duty of the comptroller forthwith to suspend from office the party delinquent. In case of such suspension, the comptroller shall appoint a suitable person to perform the duties of the officer so suspended, who shall continue to act as such officer, with all the powers conferred upon him by this title, until the parties suspended shall be restored, or another person shall have been appointed. On making such temporary appointment, the comptroller shall be required to take from the party so appointed a bond, with two sufficient sureties, to be approved by the chamberlain, and filed with the said comptroller, in such penal sum as the said chamberlain may deem just, conditioned for the faithful performance of the duties of the office during the continuance of the person so appointed therein; and all the provisions of this title prescribing the duties of the receiver of taxes, and the deputy receiver, shall apply to the person or persons so appointed in their stead by the comptroller.

Provision in Case of Sickness.

§ 925. In case of inability of the receiver to perform the duties of his office by reason of sickness or absence from the city, the comptroller shall designate some suitable person to perform the duties of his office during such

inability or absence, and shall, in his discretion, take from such person a bond, with sufficient sureties, in the manner prescribed in the preceding section.

Collection of Unpaid Personal Tax by Distress and Sale.

§ 926. It shall be lawful for the said receiver, if any tax for personal property and the interest thereon, as hereinbefore provided, shall remain unpaid on the fifteenth day of the month of January, succeeding the receipt by him of the rolls, to issue his warrant under his hand and seal directed to any marshal commanding him to levy the said tax, with interest thereon at the rate of seven per centum per annum from the day of the delivering of the assessment-rolls and warrants to the said receiver to the time when the same shall be paid by distress and sale of the goods and chattels of the person against whom the said warrant shall be issued, or of any goods and chattels in his or her possession, wheresoever the same shall be found within the said city, and to pay the same to the said receiver, and return such warrant within thirty days after the date thereof. For the purposes of this section the jurisdiction of the marshal is co extensive with The City of New York. The comptroller of The City of New York, however, may from time to time as may be necessary to insure prompt collection of said tax, extend or renew such warrant, but no single extension or renewal thereof shall in any event exceed sixty days.

Id.; May Add Costs of Distress and Sale.

§ 927. In all cases where the said receiver shall proceed by distress and sale of the goods and chattels of any person for the payment of any tax due and payable, it shall be lawful for him to authorize and empower the officer making such distress and sale to collect, in addition to the tax and the interest thereon, the costs of such distress and sale, which costs shall be in addition to any disbursements five cents for every dollar collected to the amount of one hundred dollars, and two and one-half cents for every dollar collected over one hundred dollars.

Id.; Sale to be Advertised.

§ 928. The marshal to whom a warrant for the collection of any tax is issued shall give public notice at the time and place of sale of any property distrained by virtue thereof, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in at least three public places in the ward where such sale shall be made. The sale shall be by public auction.

Id.; Disposition of Surplus.

§ 929. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus moneys shall be retained by the said marshal until the rights of the parties shall be judicially determined.

Enforcing Payment of Personal Taxes; Fine May be Imposed.

§ 930. In case of the refusal or neglect of any person to pay any tax imposed on him for personal property, if there be no goods or chattels in his possession upon which the same may be levied by distress and sale according to law, and if the value of the property assessed shall be the sum of one thousand dollars, the said receiver, if he has reason to believe that the person taxed has debts, credits, choses in action, or other personal property not taxed elsewhere in this state, and upon which the levy can not be made according to law, may thereupon, in his discretion, make application to the supreme court, within one

year from the date of the return of the warrant by the marshal, to enforce the payment of such tax. The court may impose a fine for the misconduct mentioned in this section, sufficient in amount for the payment of the tax assessed, and ten dollars, costs of motion, together with expenses of the proceedings authorized by this title, to enforce such payment or to punish such misconduct; and the amount of such tax shall be paid out of such fine to the said receiver, who shall pay over the same in like manner as the tax was required to be paid; and costs and expenses of such proceedings shall be paid out of such fine to the said receiver who made the application to enforce the payment of the tax.

Id.; Order to Prosecute; When Operates as Assignment of Bond.

§ 931. Whenever any bond taken under the proceedings referred to in the last preceding section shall be ordered to be prosecuted, such order shall operate as an assignment of the bond to the said receiver, who shall be authorized to prosecute the same in any court of record, in his name as such receiver, as the assignee of the officer to whom the bond was given, in the same manner as in other sections on bonds with conditions to perform covenants other than for the payment of money; and the measure of damages in such action shall be the extent of such tax, and the costs and expenses of the proceedings to enforce the payment thereof, and shall be applied and paid in like manner as the fine mentioned in the next preceding section is therein directed to be applied and paid, and in all such actions, if the plaintiff recovers, he shall recover all costs against the defendant.

Id.; Cases to be sent to Corporation Counsel.

§ 932. It shall be the duty of the receiver of taxes to send or cause to be sent to the corporation counsel, monthly, all cases of personal taxes embraced in the assessment rolls, when the assessment is one thousand dollars or more, and upon which a warrant to any of the mar-

shals of said city has been issued and unsatisfied for a period of sixty days, or returned unsatisfied in whole or part, and of all other cases of personal taxes, except in those cases where the comptroller may extend the warrant, when application to any court may be made for the collection of the tax, and the said counsel is authorized to make requisitions upon the said receiver for all such cases.

Id.; Duties of Corporation Counsel.

§ 933. The corporation counsel shall be charged with the prosecution of all suits or proceedings, in any court having jurisdiction, for the collection of all cases of personal taxes sent to him by the receiver of taxes, or where, by any law of this state, any suit or proceeding may be instituted by such receiver or any marshal acting under a tax warrant, in any court for the collection of any tax or personal property, and shall, subject to such control, act as counsel to the receiver of taxes, and to any marshal acting under the warrant of said receiver in the collection of any tax for personal property.

Court to Dismiss Proceedings if Satisfied that Taxes on Personal Property Cannot be Paid.

§ 934. The court in which any proceeding may be commenced to enforce the payment of any tax for personal property, may dismiss the proceedings absolutely without costs, or conditionally, upon the payment of costs, or may, on the facts, in its discretion, dismiss such proceedings on the payment of such part of the tax and costs as shall be just, in any case where it shall be satisfied that the person or persons taxed are unable, for want of property, or other reason, to pay any tax. In cases where any proceedings shall be dismissed under this section, on payment of a portion of the tax, a copy of the order of the court shall be filed with the receiver of taxes, and a note of the contents of such order entered upon the assessment-roll, and it shall be the duty of said counsel to report all cases dis-

missed on account of the inability of the person to pay the tax to the commissioner of taxes and assessments, annually, on the thirty-first day of December in each year; and said commissioner is hereby authorized to strike the names of all such persons from the assessment rolls for the succeeding year.

Counsel to Keep Register, Etc.

§ 935. The corporation counsel shall keep, in proper books to be provided by the corporation of said city for that purpose, a register of all actions or proceedings prosecuted, and upon the expiration of his term of office, or his resignation thereof or removal therefrom, the corporation counsel shall deliver to his successor in office all books and papers in his hands belonging to his office, or delivered to him by the receiver of taxes, or any marshal of said city, and in any way connected with his office, or any business pertaining thereto. The said counsel or any marshal shall pay over, under oath, to the receiver of taxes of said city, monthly, or oftener, if required, all taxes collected by him.

Receiver; When May Sue for Personal Taxes.

§ 936. Any tax duly imposed for personal property upon any person or corporation in The City of New York, which shall remain unpaid and in arrears on the fifteenth day of January succeeding the year in which it shall have been imposed, may be recovered with interests and costs, by the receiver of taxes of said city in the name of the city, in an action in any court of record in this state.

Unpaid Taxes and Assessments, Levied Prior to January First, Eighteen Hundred and Ninety Eight; Special Provision.

§ 937. All taxes and assessments, levied before the first day of January, eighteen hundred and ninety-eight, by lawful authority, in any of the municipal and public corporations hereby consolidated, including the counties

of Kings and of Richmond, and that part of the county of Queens included within The City of New York, as hereby constituted, and which shall remain due and unpaid on said first of January, eighteen hundred and ninety-eight, shall become and be due and payable to and collectible by said city, and all tax and assessment lists in the possession of any officer, of any of said municipal and public corporations and counties, on the thirty-first day of December, eighteen hundred and ninety-seven, shall be transmitted to and deposited with the comptroller on or immediately after the first day of January, eighteen hundred and ninety-eight, and the comptroller shall thereupon transmit the same to the collector of assessments and arrears, for collection by suit, or under and pursuant to the laws in force when the said taxes were levied, or in force when this act takes effect.

CONSTITUTION OF 1846, AS AMENDED ARTICLE III, SECTION 18.

"The legislature shall not pass a private or local bill in any of the following cases: . . .

"Granting to any corporation, association or individual the right to lay down railroad tracks. . . .

"But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property-owners cannot be obtained, the General Term of the Supreme Court, in the district in which it is proposed to be constructed, may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property-owners."

GENERAL LAWS REGARDING FRANCHISES.

An Act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages.

(Laws of 1884, Ch. 252, p. 309.)

Passed May 6, 1884; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Any number of persons, not less than thirteen, may make and sign articles of association, and form a company for the purpose of constructing, maintaining and operating a street surface railroad for public use in the conveyance of persons and property in cars for compensation, in any of the cities, towns or villages of this state, or in any two or more civil divisions thereof. Such articles of association shall state the name of the company, the number of years the same is to continue, the names of the cities, towns and villages, and the counties, and the names or description of the streets, avenues and highways in which the road is to be constructed, the places from and to which the road is to be constructed, maintained and operated, the length of said road, or as near as may be, the amount of the capital stock of the company, which shall not be less than ten thousand dollars for every mile of road constructed, or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of the seven or more directors of the company who shall manage its affairs for the first year, and until others are chosen in their places. Each subscriber of said articles of association shall subscribe thereto his name, place of residence, and number of shares of

stock he agrees to take in said company. Such articles of association shall be filed in the office of the secretary of state when one thousand dollars of stock for every mile of railroad proposed to be constructed has been subscribed thereto, and ten per cent paid thereon in good faith, in cash, to the directors named in said articles of association, and when there is indorsed on said articles of association, or annexed thereto, an affidavit made by at least three of the directors named in said articles, that the amount of stock required by this section has been in good faith subscribed, and ten per cent paid in cash thereon, as aforesaid, and that it is intended in good faith to construct or to maintain and operate the road mentioned in such articles of association, which affidavit shall be recorded with the articles of association. The secretary of state shall endorse on said articles of association the day they are filed, and record the same and said affidavit in a book to be provided by him for that purpose; and from the date of such filing the persons who have so subscribed such articles of association, and all persons who shall become stockholders in such company shall be a corporation by the name specified in such articles of association, and shall possess the powers and privileges granted to corporations, and be subject to the provisions contained in title three of chapter eighteen of the first part of the Revised Statutes, except the provisions contained in the seventh section of said title. Such corporation shall also have all the powers and privileges granted, and be subject to all the liabilities imposed by this act, or by the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty, and the several acts amendatory thereof, except as the said acts are herein modified. No existing street surface railroad company shall extend its line, or construct any branch thereof under this act, until it has made and filed with the secretary of state, a certificate signed by its board of directors, which certificate shall contain a statement of the name of the cities, towns, villages and counties, and the names or description of the

streets, avenues and highways in which such extension or branch is to be constructed, the places from and to which the same is to be constructed, maintained and operated, and the length thereof as near as may be.

§ 2. The board of directors of every corporation formed under this act shall consist of not less than seven nor more than thirteen.

§ 3. Any company organized as aforesaid, or any existing street surface railroad company or corporation heretofore organized for the purpose of building and operating a street railroad, may construct, maintain, operate, use and extend a railroad or branches on the surface of the soil, through, upon and along any of the streets, avenues, roads or highways of such cities, towns and villages, and also through, along and upon any private property which said company may acquire for the purpose, and may also construct such switches, sidings, turnouts and turntables and suitable stands as may be necessary for the convenient working of such road, provided that the consent in writing of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be after the passage of this act first obtained. The consent of such owners shall be acknowledged as are deeds entitled to be recorded. In any city the common council acting subject to the power now possessed by the mayor to veto ordinances, and in any village the board of trustees shall be the local authorities to give all the consents required under this act in respect of such city or village. Provided that where in any city the exclusive control of any street, road, highway, avenue, or property which is to be used or occupied by any such company is, by law, vested in any local authority other than the common council of such city, the consent of the local authorities, in whom such exclusive control is so vested shall be also obtained.

§ 4. In incorporated cities, before acting upon an application for their consent the local authorities shall

give public notice of such application and of the time and place when such application will first be considered by a notice thereof, to be published daily for at least fourteen days in two daily newspapers of said city, to be designated by the mayor of the city. And when such application is made to the local authorities of any incorporated village, the notice of such application shall be published for at least fourteen days in a newspaper published in said village, if any there shall be, if none then in two daily newspapers published in the city nearest such village. The consent of the local authorities shall in all cases be applied for in writing, and when granted shall be upon the express condition that the provisions of this act pertinent thereto shall be complied with, and shall be filed in the office of the county clerk of the county in which said railroad is located. Any consent so given by said local authorities shall cease and determine at the expiration of one year thereafter, unless prior to the expiration of such period the company obtaining such consent shall have filed the consent of the requisite amount in value of property owners or the determination of commissioners confirmed by the court, as herein provided. The consent of the local authorities, given as aforesaid, shall operate as the consent of such city, town or village, as the owners of any property, that such railroad may be constructed, maintained and operated in, upon and along any street, avenue, road or highway by which such property is bounded, except that where such railroad runs through any street or avenue bounded on one side by any public park or square the consent of one-half the owners of property on the other side of said street or avenue, and opposite such park or square shall also be first obtained. For the purposes of this act the value of the property so bounded shall be ascertained and determined from the assessment roll of the city or town in which such property is situated, confirmed or completed last before the local authorities shall have given their consent, excepting such property owned by such city, town or village, the value of which shall be ascertained and determined by allowing therefor the same

price or value as is shown by such assessment roll to be the value of the equivalent in size and frontage of any adjacent property on the same street. In case the consent of property owners required by any provision of this act cannot be obtained, the company so failing to obtain such consents may apply to any general term of the supreme court, held in the district in which the road of such company is proposed to be constructed, for the appointment of three commissioners to determine, after a hearing of all parties interested, whether such railroads ought to be constructed and operated.

§ 5. Notice of such application shall be served personally upon each property owner not having given his consent by delivering the same to him or his agent or representative, as such owner, agent or representative appears upon such assessment-roll of the city or town in which the property is situated; or by mailing the same, properly folded and directed to such owner, agent or representative, at the post-office nearest his usual place of residence, with the postage paid thereon, at least ten days prior to such application. If the person on whom such service is to be made is unknown, or his residence is unknown, and cannot by reasonable diligence be ascertained, no service of such notice, personally, or by mail, need be made. And said general term of the supreme court to which such application is made, upon due proof of the service aforesaid, shall appoint three disinterested persons, who shall act as commissioners, and said commissioners, within ten days after their appointment, shall cause public notice to be given of their first sitting, in the manner directed by said general term, and may adjourn from time to time until all their business is completed. Vacancies may be filled by said general term, after such notice to persons interested as it may deem proper to be given, and the evidence taken before as well as after the occurring of the vacancy shall be deemed to be properly before said commissioners.

§ 6. The said commissioners shall determine, after such public hearing of all parties interested, whether

such railroad ought to be constructed and operated, and shall make a report thereon, together with the evidence taken, to said general term, and their determination that such road ought to be constructed and operated, confirmed by said court, shall be taken in lieu of the consent of the property owners before mentioned. Such report shall be made within sixty days after appointment of said commissioners, unless the said court or a judge thereof shall, for good cause shown, extend such time.

§ 7. The local authorities of any incorporated city or village to whom application, under the provisions of this act, may be made for consent to the construction, maintenance, use, operation or extension of a street surface railroad upon any street, road, avenue or highway may at their option, provide for the sale of, and sell at public auction the franchise, subject to all the provisions of this act, to so construct, maintain, use, operate or extend such street surface railway. Prior to such sale, notice of the time, place and terms thereof, and of the route to be sold, and of the conditions upon which the consent of said local authorities to the construction, maintenance, use, operation or extension of a surface street railroad thereon will be given, shall be published three times a week for at least three weeks, in two daily newspapers of said city, to be designated by the mayor of said city. And local authorities of any incorporated village shall, prior to any sale by them, as herein provided, cause the above notice provided for to be published three times a week for at least three weeks in a newspaper published in said village, if any there shall be, if none, then in two daily newspapers published in the city nearest such village.

§ 8. Every corporation incorporated under, or constructing or operating a railroad constructed or extended under the provisions of this act, within the cities of the state having a population of two hundred and fifty thousand or more, as aforesaid, shall for and during the first five years after the commencement of the operation of any portion of its railroad, annually, on the first day of November, pay into the treasury of said respective cities

in which its road is located to the credit of the sinking fund thereof, three per cent of its gross receipts for and during the year ending the next preceding thirtieth day of September, and after the expiration of said five years, make a like annual payment into the treasury of said respective cities, for the credit of said sinking funds, of five per cent instead of three per cent of said gross receipts; provided, however, that every corporation now existing and operating a street surface railroad which shall extend its tracks or construct branches therefrom, and operate such extensions or branches under the provisions of this act, or the corporation operating such branches or extensions, shall pay such percentages as aforesaid only upon such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension and branches shall bear to the entire length of its tracks. In any other incorporated city or village the local authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this act, the payment annually of such percentage of gross receipts, not exceeding three per cent, into the treasury of said city or village, as they may deem proper. In case of extension the amount to be paid shall be ascertained in the manner hereinbefore provided. The company or corporation failing to pay such percentage of its gross earnings, as aforesaid, shall, after said first day of November, pay in addition thereto, five per cent a month on such percentage until paid. The president and treasurer of any company required by the provisions of this act to make a payment annually upon its gross receipts shall, on or before the first day of November in each year, make a verified report to the comptroller or treasurer of the city, of the gross amount of its receipts for the year ending the next preceding thirtieth day of September, and the books of said company shall be open to inspection and examination by said comptroller, treasurer, or his duly appointed agent, for the purpose of ascertaining the correctness of said

report as to said gross receipts. The corporate rights, privileges and franchises acquired under this act, by any corporation which shall fail to comply with all the provisions of this section, shall be forfeited to the people of the State of New York, and upon judgment of forfeiture rendered in a suit brought in the name of the people by the attorney-general, shall cease and determine. Any person intentionally making a report as herein provided, which shall be false, shall be guilty of perjury.

§ 9. Every such corporation incorporated under, or constructing, extending or operating a railroad constructed or extended under the provisions of this act, within the incorporated cities and villages of this state, shall also whenever and as required and under the supervision of the proper local authorities have and keep in permanent repair the portion of every street and avenue between its tracks, the rails of its tracks and a space two feet in width outside and adjoining the outside rail of its track or tracks so long as it shall continue to use such tracks so constructed under the provisions of this act. In case of the neglect of such corporations to make such pavement or repairs, the local authorities may make the same at the expense of such corporation, after the expiration of thirty days' notice to do so. The local authorities having charge of streets, avenues, roads or highways in cities and incorporated villages may make such reasonable ordinances or regulations as to the rate of speed, mode of use of tracks, and removal of ice and snow, as the interest and convenience of the public may require. A corporation whose servants or agents willfully or negligently violate such an ordinance or regulation, as aforesaid, shall be liable to such city or village for a penalty not exceeding five hundred dollars.

§ 10. In case any corporation incorporated under this act, or seeking to to* extend its road under the provisions thereof, shall not commence the construction or extension of its road within one year after it has acquired the con-

* So in the original.

sent of the local authorities and property owners, or determination of the general term of the supreme court, as herein required, and shall not complete the same within three years after obtaining such consents, its rights, privileges and franchises acquired under the provisions of this act shall cease and determine. During the pendency of legal proceedings the supreme court shall have power to extend the period for the performance of any act herein required.

§ 11. The commissioners provided for in this act, to be appointed by the general term, shall receive the sum of ten dollars each per day for each and every day they may be engaged, and the charges, expenses and disbursements of such commissioners shall be paid by the company making the application for their appointment.

§ 12. Any street surface railway company may in any case operate any portion of its road by animal or horse power, or by any power other than locomotive steam power, which may be consented to by the local authorities and by a majority of the property owners, obtained in accordance with sections three and four of this act.

§ 13. No company or corporation incorporated under, or constructing and operating a railroad under the provisions of this act, shall charge any passenger more than five cents for one continuous ride from any point on its road or on any road or line or branch operated by it or under its control to any other point thereon or on any connecting branch thereof within the limits of any incorporated city or village. This section shall not be construed to apply to any part of any road heretofore constructed, and now in operation, unless such company shall acquire the right to extend such road, or to construct branches thereof under the provisions of this act, in which event its rate of fare shall not exceed its authorized rates prior to such extension.

§ 14. Except for necessary crossings no street surface railroad company shall construct, extend or operate its road or tracks in that portion of any street, avenue,

road or highway in which a street surface railroad is, or shall be lawfully constructed except with the consent of the company owning and maintaining the same, provided, however, that any two or more railroad companies now existing, or hereafter formed under the provisions of this act, may join and unite and use each other's tracks for a distance not exceeding one thousand feet, whenever the court, upon an application for the appointment of commissioners, next hereinafter provided, shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, and that the public convenience requires the same, in which event the right of such use shall be given only for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts, as provided in respect to acquiring title to real estate under chapter one hundred and forty of the laws of eighteen hundred and fifty, entitled "An act to authorize the formation of railroad corporations, and to regulate the same," and the several acts amendatory thereof; or by the board of railroad commissioners in cases where the companies interested shall unite in a request for such board to act. Such commissioners, in determining the compensation to be paid for the use by one company of the tracks of another, shall consider and allow for the use of tracks and for all injury and damage to the company whose tracks may be so used.

§ 15. It shall be lawful for any street surface railroad company or companies to lease, or to transfer its or their right, subject to all its or their obligations in respect thereof, to run upon or to use any portion of its or their railroad tracks to any other street surface railroad company authorized to run upon such route, upon such terms as may be agreed upon by a majority of the respective boards of directors thereof, subject to approval or rejection by a vote of a majority of the stock represented at meetings of the stockholders of each of such companies, called for that purpose, and held within three months after such agreement shall have been adopted by the several

boards of directors. But nothing in this section shall be construed to authorize any railroad company in cities of over three hundred thousand population, to lease its rights or franchises to any other company in said cities which owns and operates a road parallel thereto.

§ 16. No street surface railroad shall be constructed to run in whole or in part upon the surface of any street or highway under the authority of any commission appointed under the provisions of chapter six hundred and six of the laws of eighteen hundred and seventy five, entitled "An act further to provide for the construction and operation of a steam railway or railways in counties of the state" or the acts in addition thereto or amendatory thereof.

§ 17. No street surface railroad shall be constructed or extended under the provisions of this act upon ground occupied by buildings belonging to any town, city, county, or to this state, or to the United States, or in public parks, except in tunnels, to be approved by the local authorities having control of such parks.

§ 18. All acts and parts of acts, whether general or special, inconsistent with this act are hereby repealed, but nothing in this act shall revive or make valid for the purposes of this act any consents of property owners or local authorities, obtained prior to the passage of this act, or shall interfere with or repeal or invalidate any rights heretofore acquired under the laws of this state by any horse railroad company, or affect, or repeal any right of any existing street surface railroad company to construct, extend, operate and maintain its road in accordance with the terms and provisions of its charter, and the acts amendatory thereof, or revive any charter which has become lapsed or forfeited, or any pending litigation.

§ 19. The legislature may at any time alter, amend or repeal this act.

§ 20. This act shall take effect immediately.

An Act to secure adequate compensation for the right to construct, maintain, use, operate or extend street railroads in cities and villages.

(Laws of 1886, Ch. 65, p. 81.)

Passed March 22, 1886; three-fourths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The local authorities of any incorporated city or village to whom application may be made for consent to the construction, maintenance, use, operation or extension of a street railroad or a railroad or railway for the transportation of passengers, mails or freight over, upon, under, through or across any of the streets, roads, avenues, parks or public places in such city or village, must provide as a condition of the said consent to the use of said street, road, avenue, park or public place, that the right, franchise and privilege of using the said street, road, avenue, park or public place, shall be sold at public auction to the bidder who will give the largest percentage per annum of the gross receipts derived from the operation of said railroad or railway, with adequate security as hereinafter provided for the payment of such percentage, provided that in cities having a population of two hundred and fifty thousand or more, such percentage shall in no case be less than three per centum per annum of such gross receipts for and during the period of the first five years of the operation of any portion of said railroad or railway, and five percentum per annum of such gross receipts after the expiration of five years. The Legislature expressly reserves the right to regulate and reduce the rate of fare on such railroad or railway. Prior to such sale notice of the time, place and terms thereof, and of the route to be sold, and of the conditions upon which the consent of said local authorities to the construction, maintenance, use, operation or extension of such street railroad or any railroad or railway carrying freight, passengers or mails over or under any

of the streets, roads, avenues, parks or public places of any incorporated city or village will be given, shall be published three times a week for at least three weeks in two daily newspapers of said city, to be designated by the Mayor of said city. And the local authorities of any incorporated village shall, prior to any sale by them as herein provided, cause the notice above provided for, to be published for at least three weeks in a newspaper published in said village, if any there shall be; if none, then in two daily newspapers published in the city nearest said village.

§ 2. This act shall apply to all applications for consent to construct, maintain, use, operate or extend such street railroads or railways as aforesaid, made under or in pursuance of any statute, whether such application is hereafter made or may have been heretofore made, but not at the passage of this act finally acted upon by the local authorities, and also to applications upon which such local authorities have finally acted, but which have not at that time been made final by the consent of the owners of a sufficient proportion of the property, situated upon the line of the proposed railroad or railway, or by the approval of the General Term of the Supreme Court.

§ 3. The security required by section one of this act shall be a bond or undertaking in writing and under seal, in such form, condition, amount and sureties as shall be required and approved by the Mayor and Common Council of any such city and by the trustees of any such village.

§ 4. Section seven of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages," and all amendments of said section are hereby repealed.

§ 5. This act shall take effect immediately.

An Act to amend chapter sixty five of the laws of eighteen hundred and eighty-six, entitled "An act to secure adequate compensation for the right to construct, maintain, use, operate or extend street railroads in cities and villages."

(Laws of 1886, Ch. 642, p. 919.)

Passed June 15, 1886; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Chapter sixty-five of the laws of eighteen hundred and eighty-six is hereby amended so as to read as follows:

§ 1. The local authorities of any incorporated city or village, to whom application may be made for consent to the construction, maintenance, use, operation or extension of a street railroad or a railroad or railway for the transportation of passengers, mails or freight, over, upon, under or through any of the streets, roads, avenues, parks or public places in such city or village must provide, as a condition of the said consent to the use of said street, road, avenue, park or public place, that the right, franchise and privilege of using the said street, road, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the largest percentage per annum of the gross receipts of said company or corporation, with adequate security as hereinafter provided, for the fulfillment of said agreement and for the commencement and completion of such road according to the plan or plans, and on the route or routes fixed for its construction, within the time or times hereinafter designated and prescribed therefor, but this agreement shall not release any such road from the percentages required to be paid by chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four. The Legislature expressly reserves the right to regulate and reduce the rate of fare on such railroad or

railway. The local authorities of any city or village may give such consent to any applicant therefor duly incorporated and existing under the laws of this State for the purpose of providing street railroad facilities for compensation in said city or village; and the bidder to which such consent may be sold shall be an incorporated railroad or railway company, organized to construct, maintain and operate a street railroad in the city or village for which such consent may be given. Prior to such sale, notice of the time, place and terms thereof, and of the route or routes to be sold, and of the conditions upon which the consent of said local authorities to the construction, maintenance, use, operation or extension of such street railroad or any railroad or railway carrying freight, passengers or mails over, under or upon any of the streets, roads, avenues, parks or public places of any incorporated city or village will be given, shall be published three times a week for at least three weeks in two daily newspapers of said city, to be designated by the mayor of said city, except in cities where two daily papers are not published, then said notices shall be published at least once a week for at least three weeks successively in a newspaper published in said city, to be designated by the mayor. And the local authorities of any incorporated village shall, prior to any sale by them as herein provided, cause the notice above provided for, to be published for at least three weeks in a newspaper published in said village, if any there shall be; if none, then in two daily newspapers published in the city nearest said village. The comptroller or other chief fiscal officer, of the cities, and the president of the board of trustees in villages, shall attend and conduct the sale to be made under the provisions of this act, and may adjourn the same from time to time, not exceeding twice, for a period not exceeding four weeks in the aggregate, and may cancel the bid if the bidder shall not furnish satisfactory security, and sell the said consent and license in the same manner as above provided. The bidder or bidders to whom the said license or consent shall be sold, shall commence the construction of the said

road within one year, and complete the same within three years from the date of sale. The said bidder who may build and operate said railroad, shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities of the city or village; and in the event of the failure or refusal of the party or corporation operating or using the railroad to be constructed as aforesaid, to pay the rental or percentage of gross earnings agreed upon, then, upon notice to the said party or corporation—of not less than sixty days—the said consent and right to operate such railroad may be declared forfeited, and the same may be resold to the highest bidder in the manner above provided. Such forfeiture may be decreed or ordered by the judgment of any court having jurisdiction, after the party or corporation shall have opportunity to be heard in their defense.

§ 2. This act shall apply to all applications for consents by such local authorities, to construct, maintain, use, operate or extend such street railroads or railways as aforesaid, made under or in pursuance of any statute, whether such application is hereafter made, or may have been heretofore made, but not at the passage of this act finally acted upon by the local authorities; and all consents hereafter given by said local authorities shall cease and determine at the expiration of two years thereafter, and all such consents heretofore given shall cease and determine at the expiration of two years from the date of the passage of this act, unless prior to the expiration of such period or periods the consent of the owners of a sufficient proportion of the property situated on the line of the proposed railroad or railway, or the approval of the general term of the supreme court shall have been obtained. None of the provisions of this act, or of chapter sixty-five of the laws of eighteen hundred and eighty-six except the provisions of this section in relation to the determination of the consents of said local authorities shall apply to companies

now organized or hereafter to be organized for the purpose of building elevated railroads in counties having less than one million inhabitants, nor to street surface railroad companies heretofore organized in cities or villages of less than forty thousand inhabitants.

§ 3. The security required by section one of this act shall be a bond or undertaking in writing and under seal, in such form, condition, amount and sureties as shall be required and approved by the comptroller or other chief fiscal officer of any such city, and by the trustees of any such village.

§ 4. This act shall not affect the New York Arcade Railway Company nor the rights possessed by it.

§ 5. Section seven of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages," and all amendments of said section, and all acts or parts of acts inconsistent herewith are hereby repealed.

§ 6. This act shall take effect immediately.

An Act to amend chapter sixty-five of the laws of eighteen hundred and eighty-six entitled "An act to secure adequate compensation for the right to construct, maintain, use, operate, or extend street railroads in cities and villages," and the act or acts amendatory thereof.

(Laws of 1889, Ch. 564, p. 756.)

Approved by the Governor June 15, 1889. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section one of chapter sixty-five of the laws of eighteen hundred and eighty-six, entitled "An act to secure adequate compensation for the right to construct,

maintain, use, operate, or extend street railroads in cities and villages" as amended by chapter six hundred forty-two of the laws of eighteen hundred and eighty-six, is hereby further amended so as to read as follows: follows:*

§ 1. The local authorities of any incorporated city or village to whom application may be made for consent to the construction, maintenance, use, operation or extension of a street railroad or a railroad or railway for the transportation of passengers, mails or freight, over, upon, under, or through any of the streets, roads, avenues, parks or public places in such city or village must provide, as a condition of the said consent to the use of said street, road, avenue, park or public place, that the right, franchise and privilege of using the said street, road, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the largest percentage per annum of the gross receipts of said company or corporation with adequate security as hereinafter provided, for the fulfillment of said agreement and for the commencement and completion of such road according to the plan or plans, and on the route or routes fixed for its construction, within the time or times hereinafter designated and prescribed therefor, but this agreement shall not release any such road from the percentages required to be paid by chapter two hundred and fifty-two of the laws of one thousand eight hundred and eighty-four, and whenever a sale shall be made of the right to construct and operate a branch or extension of an existing railroad, but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor, and if operated by separate corporations earnings from such joint business shall be divided upon the basis of mileage, in the proportions provided by section eight of chapter two hundred and fifty-two of the laws of one thousand eight hundred and eighty four. The Legislature expressly reserves the right to regulate and reduce

*So in the original.

the rate of fare on such railroad or railway. The local authorities of any city or village may give such consent to any applicant therefor duly incorporated and existing under the laws of the State for the purpose of providing street railroad facilities for compensation in said city or village; and the bidder to which such consent may be sold shall be an incorporated railroad or railway company, organized to construct, maintain and operate a street railroad in the city or village for which such consent may be given. Prior to such sale, notice of the time, place and terms thereof, and of the route or routes to be sold, and of the conditions upon which the consent of said local authorities to the construction, maintenance, use, operation or extension of such street railroad or any railroad or railway carrying freight, passengers or mails over, under or upon any of the streets, roads, avenues, parks or public places of any incorporated city or village will be given, shall be published three times a week for at least three weeks in two daily newspapers of said city, to be designated by the mayor of said city, except in cities where two daily papers are not published, then said notices shall be published at least once a week for at least three weeks successively in a newspaper published in said city to be designated by the mayor. And the local authorities of any incorporated village shall, prior to any sale by them as herein provided, cause the notice above provided for, to be published for at least three weeks in a newspaper published in said village, if any there shall be; if none, then in two daily newspapers published in the city nearest said village. The comptroller or other chief fiscal officer, of the cities, and the president of the board of trustees in villages, shall attend and conduct the sale to be made under the provisions of this act, and may adjourn the same from time to time, not exceeding twice, for a period not exceeding four weeks in the aggregate, and may cancel the bid if the bidder shall not furnish satisfactory security, and sell the said consent and license in the same manner as above provided. The bidder or bidders to whom the said consent or license shall be sold,

shall commence the construction of the said road within one year, and complete the same within three years from the date of sale. The said bidder who may build and operate said railroad, shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local authorities of the city or village; and in the event of the failure or refusal of the party or corporation operating or using the railroad to be constructed as aforesaid, to pay the rental or percentage of gross earnings agreed upon, then, upon notice to the said party or corporation, of not less than sixty days, the said consent and right to operate such railroad may be declared forfeited, and the same may be resold to the highest bidder in the manner above provided. Such forfeiture may be decreed or ordered by the judgment of any court having jurisdiction, after the party or corporation shall have opportunity to be heard in their defense.

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An Act in relation to railroads constituting chapter thirty nine of the general laws.

(Laws of 1890, Ch. 565, p. 1108.)

Approved by the Governor June 7, 1890. Passed, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows: . . .

ARTICLE IV.

§ 90. *Street surface railroad; general provision.*—A corporation organized for the purpose of building and operating or extending a street railroad or any of its branches, for public use in the conveyance of persons and property in cars for compensation, upon and along any street, avenue, road or highway, in any city, town or village, or in any two or more civil divisions of the state, must comply with the provisions of this article.

§ 91. *Consent of property owners and municipal authorities.*—Such railroad shall not be built, extended or operated, unless the consent in writing, acknowledged as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on, and also the consent of the municipal authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. In cities the common council, acting subject to the veto power of the mayor; in villages the board of trustees, and in towns the town board shall be the municipal authorities referred to; if, in any city, the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the last completed assessment-roll of the city, village or town in which it is situated, excepting property owned by such city, village or town, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the municipal authorities shall operate as the consent of such city, village or town as the owners of such property; but where such railroad runs through a street or avenue, bounded on one side by a public square or park, the consent of one half of the property owners on the opposite side of such square or park shall also be first obtained.

§ 92. *Consent of municipal authorities; how procured.*—The application for the consent of the municipal authorities shall be in writing, and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers, to be designated by the mayor,

and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers published in the city nearest such village or town. Such consent must be upon the express condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located.

§ 93. *Condition upon which consent shall be given; sale of franchise at public auction.*—The consent of the municipal authorities, in cities containing ninety thousand inhabitants or over, according to the last federal census, must contain the condition that the right, franchise and privilege of using any street, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form or amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city for the fulfillment of such agreement; and for the commencement within one year of such road, and its completion within three years from the date of sale according to the plan or plans, and on the route or routes fixed for its construction. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given. Notice of the time, place and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the municipal authorities to the construction and operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers at least three times a week in two of such papers, to be designated by the mayor, and in any city where two daily newspapers are not published, at least once a week in a newspaper

published therein, to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale, and may twice adjourn the same, but not more than four weeks in all, and may cancel any bid if the bidder does not furnish adequate security or otherwise comply with the terms and conditions of sale, and may resell the consent and license in the same manner as herein provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the municipal authorities. In the event of the failure or refusal of the party or corporation operating or using such railroad to pay the rental or percentage of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the consent and right to operate such railroad may be declared forfeited by the judgment of any court having jurisdiction after the party or corporation shall have had opportunity to be heard in its defense; and the same may be again sold to the highest bidder in the manner above provided. All consents given by the municipal authorities shall cease and determine at the expiration of two years thereafter, unless prior thereto the consent of a sufficient number of the property owners, or the order of the general term in lieu thereof, shall have been first obtained, and the provisions of this section shall apply to all applications for such consents made under any statute, either before or after the passage of this chapter, and not finally acted upon at the time of its passage.

§ 94. *Proceedings if property owners do not consent.*— If the consent of property owners required by any provision of this article can not be obtained, the corporation failing to obtain such consents may apply to any general term of the supreme court, held in the department in which it is proposed to construct its road for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated. Notice of

such application must, at least ten days prior thereto, be served, personally, upon each non consenting property owner by delivering the same to the person to whom such property is assessed upon such assessment-roll or by duly mailing the same properly folded and directed to such property owner at his post-office address with the postage prepaid thereon. If the person upon whom service is to be made is unknown; or his residence and post-office address are unknown and can not by reasonable diligence be ascertained service of such notice may be made by publishing the same in such newspaper of the county as the court may direct, at least once a week for two successive weeks. Upon due proof of service of such notice the court to which the application is made shall appoint three disinterested persons, who shall act as commissioners and who shall, within ten days after their appointment, cause public notice to be given of their first meeting in the manner directed by the court, and may adjourn, from time to time, until all their business is completed. Vacancies may be filled by the court after such notice to parties interested as it may deem proper to be given; and the evidence taken before as well as after the happening of the vacancy shall be deemed to be properly before such commissioners. After a public hearing of all parties interested, the commissioners shall determine whether such railroad ought to be constructed and operated and shall make a report thereon, together with the evidence taken, to the general term, within sixty days after appointment unless the court, or a judge thereof for good cause shown, shall extend such time; and their determination that such road ought to be constructed and operated, shall be taken in lieu of the consent of the property owner hereinbefore required. The commissioners shall each receive ten dollars for each day spent in the performance of their duties and their necessary expenses and disbursements, which shall be paid by the corporation applying for their appointment.

§ 95. *In cities or villages, percentage of gross receipts to be paid; report of officers.* —Every corporation, build-

ing or operating a railroad, constructed or extended under the provisions of this article, or of chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, within any city of this state having a population of two hundred and fifty thousand or more, shall for, and during the first five years after the commencement of the operation of any portion of its railroad, annually, on November first, pay into the treasury of the city in which its road is located to the credit of the sinking fund thereof, three per cent of its gross receipts for and during the year ending September thirtieth, next preceding, and after the expiration of such five years make a like annual payment into the treasury of the city for the credit of such sinking fund of five per cent of the gross receipts; and any corporation now existing and operating a street surface railroad which shall extend its tracks or construct branches therefrom, and operate such extensions or branches under the provisions of this article or of such chapter, or the corporation operating such branches or extensions shall pay such percentages only upon such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension and branches shall bear to the entire length of its tracks. In any other incorporated city or village the municipal authorities shall have the right to require, as a condition to their consent to the construction, operation or extension of a railroad under the provisions of this article, the payment annually of such percentage of gross receipts, not exceeding three per cent, into the treasury of the city or village as they may deem proper. In case of extension the amount to be paid shall be ascertained in the manner heretofore provided. The corporation failing to pay such percentage of its gross earnings shall, after November first, pay in addition thereto five per cent a month on such percentage until paid. The president and treasurer of any corporation required by the provisions of this article to make a payment annually upon its gross receipts shall, on or before November first in each year make a verified report to the

comptroller or chief fiscal officer of the city of the gross amount of its receipts for the year ending September thirtieth, next preceding, and the books of such corporation shall be open to inspection and examination by such comptroller, or officer, or his duly appointed agent, for the purpose of ascertaining the correctness of its report as to its gross receipts. The corporate rights, privileges and franchises acquired under this article or such chapter by any corporation, which shall fail to comply with all the provisions of this section shall be forfeited to the people of the State of New York, and upon judgment of forfeiture rendered in an action brought in the name of the people by the attorney-general, shall cease and determine. . . .

An Act to amend chapter five hundred and sixty five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws."

(Laws of 1892, Ch. 306, p. 628.)

Approved by the Governor April 15, 1892. Passed, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section ninety-three of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws," is hereby amended so as to read as follows:

§ 93. *Condition upon which consent shall be given; sale of franchise at public auction.*—The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall

be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form or amount and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal officer of the city for the fulfillment of such agreement and for the commencement and completion of its railroad within the times hereinafter designated according to the plan or plans and on the route or routes fixed for its construction. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor, and further, that if such right shall be purchased by any corporation other than the applicant that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor, and of such branch or extension and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given, but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties to be approved by such comptroller or

officer, conditioned that if such right, franchise and privilege shall be sold to such corporation to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty, in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route and routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the company first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to requirement and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place, and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers at least three times a week in two of such papers to be designated by the mayor, and in any city where two daily newspapers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have furnished adequate security entitling such bidder to bid or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad which

books shall at all times be subject to the inspection of the local authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentage of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeitures may have been declared. All consents hereafter given by the local authorities shall cease and determine at the expiration of two years thereafter, and all such consents heretofore given shall continue until June thirtieth, eighteen hundred and ninety-three, when they shall cease, unless prior thereto the consent of a sufficient number of the property owners or the order of the general term in lieu thereof shall have been first obtained, and the provisions of this section shall apply to all applications for such consents, made under any statute either before or after the passage of this chapter, and not finally acted upon at the time of its passage. Whenever it shall be desired to unite two street surface railroads or railroad routes at some point not over one-half mile from such respective lines or routes and establish by the construction of such connection a new route for public travel and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing

railroads, or whenever, for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length of any street surface railroad, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentages provided for extensions or branches in section ninety-five of this article, for the purposes, at the times, in the manner and upon the conditions set forth in such section.

§ 2. Section one hundred and two of chapter five hundred and sixty-five of the laws of eighteen hundred and ninety, entitled "An act in relation to railroads, constituting chapter thirty-nine of the general laws," is hereby amended so as to read as follows:

§ 102. *Construction of road in street along or across where other road is built.*—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is, or shall be lawfully constructed, except for necessary crossings, without first obtaining the consent of the corporation owning and maintaining the same except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, or to connect said railroad with a ferry, and that the public convenience requires the same, in which event the right to such use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in cases where the cor-

porations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another, shall consider and allow for the use of tracks and for all injury and damage to the corporation whose tracks may be so used.

§ 3. This act shall take effect immediately.

An Act to amend the railroad law.

(Laws of 1893, Ch. 434, p. 908.)

Approved by the Governor April 19, 1893. Passed, three fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The following sections of the railroad law are hereby amended to read respectively as follows, to take effect immediately:

§ 90. *Street surface railroad; general provision.*—The provisions of this article shall apply to every corporation which under the provisions thereof, or of any other law, has constructed or shall construct or operate, or has been or shall be organized to construct or operate, a street surface railroad, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons and property for compensation, upon and along any street, avenue, road or highway, in any city, town or village, or in any two or more civil divisions of the state, must comply with the provisions of this article. Any street surface railroad corporation, at any time proposing to extend its road or to construct branches thereof may from time to time make and file in each of the offices in which its certificates of incorporation are filed, a statement of the names and description of the streets, roads, highways and private property, in or upon which it is proposed to construct,

maintain or operate such extensions or branches. Upon filing any such statement and upon complying with the conditions set forth in section ninety-one of the railroad law every such corporation shall have the power and privilege to extend, construct, operate and maintain such road extensions or branches on the streets, roads and highways named in such statement, and also upon any private property which it may acquire for such purpose.

§ 91. *Consent of property owners and local authorities.*—A street surface railroad, or extensions or branches thereof, shall not be built, extended or operated unless the consent in writing, acknowledged or proved as are deeds entitled to be recorded, of the owners of one-half in value of the property bounded on, and also the consent of the local authorities having control of that portion of a street or highway upon which it is proposed to build or operate such railroad shall have been first obtained. In cities the common council, acting subject to the power now possessed by the mayor to veto ordinances; in villages the board of trustees, and in towns the commissioner or commissioners of highways shall be the local authorities referred to; if in any city, the exclusive control of any street, avenue or other property, which is to be used or occupied by any such railroad, is vested in any other authority, the consent of such authority shall also be first obtained. The value of the property above specified shall be ascertained and determined by the assessment-roll of the city, village or town in which it is situated, completed last before the local authorities shall have given their consent, except property owned by such city, village or town, or by the state of New York, or the United States of America, the value of which shall be ascertained and determined by making the value thereof to be the same as is shown by such assessment-roll to be the value of the equivalent in size and frontage of the adjacent property on the same street or highway; and the consent of the local authorities shall operate as the consent of such city, village or town as the owners of such property. But

where such railroad runs through a street or avenue bounded on one side by a public square or park, the consent of one-half of the property owners on the other side of such street or avenue and opposite to such square or park shall also be first obtained.

§ 92. *Consent of local authorities; how procured.*—The application for the consent of the local authorities shall be in writing and before acting thereon such authorities shall give public notice thereof and of the time and place when it will first be considered, which notice shall be published daily in any city for at least fourteen days in two of its daily newspapers if there be two, if not, in one, to be designated by the mayor, and in any village or town for at least fourteen days in a newspaper published therein, if any there shall be, and if none, then daily in two daily newspapers if there be two, if not, one published in the city nearest such village or town. Such consent must be upon the expressed condition that the provisions of this article pertinent thereto shall be complied with, and shall be filed in the office of the clerk of the county in which such railroad is located. Whenever the consent of the common council of a city is applied for, the first consideration, of which notice is hereby required, may be by committee of such common council. Any such notice, publication or consideration heretofore or hereafter given, made or had in substantial conformity with the requirements of this section, is and shall be sufficient notice, publication and consideration for all the purposes hereof notwithstanding any conflicting provision of any local or special act or charter.

§ 93. *Condition upon which consent shall be given; sale of franchise at public auction.*—The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last federal census or state enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest

percentage per annum of the gross receipts of such corporation, with a bond or undertaking in such form and amound* and with such conditions and sureties as may be required and approved by the comptroller or other chief fiscal office † of the city, for the fulfillment of such agreement and for the commencement and completion of its railroad within the times hereinafter designated according to the plan or plans and on the route or routes fixed for its construction. Whenever such consent shall provide for the sale at public auction of the right to construct and operate a branch or extension of an existing railroad, such consent shall provide that but one fare shall be exacted for passage over such branch or extension and over the line of road which shall have applied therefor; and further, that if such right shall be purchased by any corporation other than the applicant, that the gross receipts from joint business shall be divided in the proportion that the length of such extension or branch so sold shall bear to the entire length of the road which shall have applied therefor and of such branch or extension, and that if such right shall be purchased by the applicant, the percentage to be paid shall be calculated on such portion of its gross receipts as shall bear the same proportion to the whole value thereof as the length of such extension or branch shall bear to the entire length of its road. The bidder to whom such right, franchise and privilege may be sold must be a duly incorporated railroad corporation of this state, organized to construct, maintain and operate a street railroad in the city for which such consent may be given; but no such corporation shall be entitled to bid at such sale unless at least five days prior to the day fixed for such sale, or five days prior to the day to which such sale shall have been duly adjourned, the corporation shall have filed with the comptroller or other chief fiscal officer of the city, a bond in writing and under seal, with sufficient sureties, to be approved by such comptroller or officer, conditioned

* So in the original.

† So in the original.

that if such right, franchise and privilege shall be sold to such corporation, to pay to the city where such railroad is situated the sum of fifty thousand dollars as liquidated damages and not by way of penalty in the event of the failure of such bidder to fulfill the terms of sale, comply with the provisions of this article pertinent thereto, and complete and operate its railroad according to the plan or plans and upon the route or routes fixed for its construction within the time hereinafter designated for the construction and completion of its railroad, and also conditioned to pay to the corporation first applying for the consent, if it shall not be the successful bidder, the necessary expenses incurred by such corporation prior to the sale pursuant to the requirements and direction of the local authorities, within twenty days after such sale and upon the certificate of the comptroller or other officer conducting the same as to the sum or amount to be paid. Notice of the time and place and terms of sale, and of the route or routes to be sold, and of the conditions upon which the consent of the local authorities to the construction, operation and extension of such street railroad will be given, must be published by such authorities for at least three successive weeks, and in any city having two or more daily newspapers, at least three times a week in two of such papers to be designated by the mayor, and in any city where two daily papers are not published, at least once a week in a newspaper published therein to be designated by the mayor. The comptroller or other chief fiscal officer of the city shall attend and conduct such sale and may twice adjourn the same, but not more than four weeks in all, and shall cancel any bid if the bidder shall not have furnished adequate security entitling such bidder to bid, or shall otherwise fail to comply with the terms and conditions of sale, and shall resell the consent and license in the same manner as hereinbefore provided for the first sale. The bidder who may build and operate such railroad shall at all times keep accurate books of account of the business and earnings of such railroad, which books shall at all times be subject to the inspection of the local

authorities. In the event of the failure or refusal of the corporation operating or using such railroad to pay the rental or percentages of gross earnings agreed upon, and after notice of not less than sixty days to pay the same, the local authorities interested therein may apply to any court having jurisdiction upon at least twenty days' notice to such corporation, and after it shall have had an opportunity to be heard in its defense, for judgment declaring the consent and right to operate and use such railroad forfeited and authorizing the sale again of the same in the manner hereinbefore prescribed, provided, however, that no such resale of any such consent and right heretofore granted shall be authorized except upon the condition that the same shall be subject to all liens and incumbrances existing on said railroads at the time such forfeiture may have been declared. All consents hereafter given by the local authorities, unless it be otherwise provided in such consent or in some renewal thereof may be forfeited at the expiration of two years thereafter, and every such consent heretofore given to a corporation incorporated under chapter one hundred and forty of the laws of eighteen hundred and fifty, or chapter two hundred and fifty-two of the laws of eighteen hundred and eighty-four, for the purpose of constructing and operating a street surface railroad only, wholly south of the Harlem river, shall be deemed to be in full force and effect and shall continue until June thirtieth, eighteen hundred and ninety-five, when it shall cease, unless prior thereto the required consent of property owners, or the order of the general term in lieu thereof, shall have been first obtained; and the provisions of this section shall apply to all applications for such consents made under any statute, either before or after the passage of this chapter, and not finally acted upon at the time of its passage. The board of sinking fund commissioners of any city shall have power to compromise or release any existing liability or obligation to the mayor, aldermen and commonalty of such city under the provisions of chapter six hundred and

forty-two of the laws of eighteen hundred and eighty-six, or of this chapter whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in the recorded proceedings of such board. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection can not be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as applying to or affecting or modifying the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit,

suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Any and all proceedings heretofore taken in substantial compliance with the provisions of this section, as now amended, are hereby approved, ratified and confirmed.

§ 99. *Within what time road to be built.*—In case any such corporation shall not commence the construction of its road, or of any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the general term as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents, its rights, privileges and franchises in respect of such railroad extension or branch, as the case may be, may be forfeited. If the performance of any such act, within such time, is prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper. The time for compliance with this requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad only, wholly south of the Harlem river and in cities of over twelve hundred thousand inhabitants and which has heretofore obtained such consents, is hereby extended until June thirtieth, eighteen hundred and ninety-five.

§ 102. *Construction of road in street where other road is built.*—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully

forty-two of the laws of eighteen hundred and eighty-six, or of this chapter whenever, in the opinion of such board, such release or compromise shall be just or equitable, or for the public interest, the reason for any such release or compromise to be stated in the recorded proceedings of such board. Whenever it shall be desired to unite two street surface railroad routes at some point not over one-half mile from such respective lines or routes, and establish by the construction of such connection a new route for public travel, and the corporation or corporations owning or using such railroads shall consent to operate such connection as a part of a continuous route for one fare, and it shall appear to the local authorities that such connection can not be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with existing railroads, or whenever for the purpose of connecting with any ferry or railroad depot, it shall be desired to construct an extension or branch not more than one-half mile in length, of any street surface railroad corporation, no sale of such franchise shall be made as provided in this section, but any consent of the local authorities for the construction and operation of such connection, extension or branch shall provide that the corporation or corporations operating such connection, extension or branch shall pay into the treasury of said city annually the percentage provided for extensions or branches in section ninety five of this chapter, for the purposes, at the times, in the manner and upon the conditions set forth in such section. Nothing herein contained shall be construed as applying to or affecting or modifying the terms of a certain contract bearing date January first, eighteen hundred and ninety-two, entered into by and between the city of Buffalo and the various street surface railroad corporations therein named in such contract. The local authorities may, in their discretion, make their consent to depend upon any further conditions respecting other or further security, or deposit,

suitable to secure the construction, completion and operation of the railroad within any time not exceeding the period prescribed in this article and respecting the character, quality or motive power of the road to be completed, and respecting the application of any provision herein contained as to carriage of passengers for single fare and the division of gross receipts and the payment of percentages to the line leased or operated under contract by the applicant for an extension, and also respecting any other matter concerning which, in their judgment, further conditions would be for the public interest. Any and all proceedings heretofore taken in substantial compliance with the provisions of this section, as now amended, are hereby approved, ratified and confirmed.

§ 99. *Within what time road to be built.*—In case any such corporation shall not commence the construction of its road, or of any extension or branch thereof, within one year after the consent of the local authorities and property owners or the determination of the general term as herein required, shall have been given or renewed, and shall not complete the same within three years after such consents, its rights, privileges and franchises in respect of such railroad extension or branch, as the case may be, may be forfeited. If the performance of any such act, within such time, is prevented by legal proceedings in any court, such court may also extend such time for such period as the court shall deem proper. The time for compliance with this requirement in this or any former act, by a street surface railroad corporation incorporated for the purpose of constructing a street surface railroad only, wholly south of the Harlem river and in cities of over twelve hundred thousand inhabitants and which has heretofore obtained such consents, is hereby extended until June thirtieth, eighteen hundred and ninety-five.

§ 102. *Construction of road in street where other road is built.*—No street surface railroad corporation shall construct, extend or operate its road or tracks in that portion of any street, avenue, road or highway, in which a street surface railroad is or shall be lawfully

constructed, except for necessary crossings or, in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants, over any bridge, without first obtaining the consent of the corporation owning and maintaining the same, except that any street surface railroad company may use the tracks of another street surface railroad company for a distance not exceeding one thousand feet, and in cities, villages and towns of less than one million two hundred and fifty thousand inhabitants shall have the right to lay its tracks upon, and run over and use any bridge used wholly or in part as a foot bridge, whenever the court upon an application for commissioners shall be satisfied that such use is actually necessary to connect main portions of a line to be constructed as an independent railroad, or to connect said railroad with a ferry, or with another existing railroad, and that the public convenience requires the same, in which event the right to such use shall only be given for a compensation to an extent and in a manner to be ascertained and determined by commissioners to be appointed by the courts as is provided in the condemnation law, or by the board of railroad commissioners in cases where the corporations interested shall unite in a request for such board to act. Such commissioners in determining the compensation to be paid for the use by one corporation of the tracks of another shall consider and allow for the use of tracks and for all injury and damage to the corporation whose tracks may be so used. Any street surface railroad corporation may, in pursuance of a unanimous vote of the stockholders voting at a special meeting called for that purpose, by notice in writing, signed by a majority of the directors of such corporation, stating the time, place and object of the meeting, and serving upon each stockholder appearing as such upon the books of the corporation, personally or by mail, at his last known post-office address, at least sixty days prior to such meeting, guarantee the bonds of any other street surface railroad corporation whose road is wholly or partly in the same city or town or adjacent cities or towns.

THE METROPOLITAN STREET RAILWAY COMPANY.

Broadway Surface Railroad Company.

Resolution of Common Council adopted Dec. 5th, 1884.

Whereas, the Broadway Surface Railroad Company heretofore made application in writing to the common council of the city of New York, for its consent and permission to be granted to the said company, to construct, maintain, operate and use a street surface railroad to be operated by horse power, upon and along the surface of the streets, avenues and highways in the city of New York, and upon the route mentioned in the petition of said The Broadway Surface Railroad Company, dated October 3, 1884, addressed to the said common council and duly verified on the same day by James A. Richmond, president of the said company;

And whereas, on receipt of the said petition in writing containing the aforesaid application of the said company for the consent of the common council to the construction, operation and use by said company of its proposed railroad upon the route mentioned in said petition, the common council caused public notice of such application, and of the time and place when the same would be first considered, to be published daily for at least fourteen days, in two daily newspapers of the city of New York, to wit, in the New York *World* and the *Evening Post*, which papers were designated for that purpose by his honor the mayor, and the said notice having been likewise published daily at least fourteen days in the newspaper published in the city of New York called the *Daily Register;*

And whereas, on the 29th day of October, 1884, at 11 o'clock a. m., at the chamber of the board of aldermen, that being the time and place designated in said notice, a meeting of the common council was had to first consider

the aforesaid application of said The Broadway Surface Railroad Company, and the said application and the accompanying papers having been thereupon referred to the committee on railroads in order that all persons interested might have a hearing, and the said committee having had several protracted sessions at which every person interested either for or against the application who desired to be heard was heard, and the said committee having listened to and received all arguments or evidence offered in support of or against the said application, and having made their report to this board, dated November 10th, 1884, accompanied by a stenographic or printed record of the proceedings before the committee, together with all documents or exhibits offered by any or either of the parties, and the said report and record and the accompanying papers having been duly considered by the board;

And whereas, in the opinion of the common council, an urgent necessity exists for a railroad in Broadway between the Battery and Union square for the accommodation of the general public;

And whereas, in the judgment of this board it is not expedient to make an auction sale of the consent or permission which alone the common council has power to grant for the construction of the proposed railroad, but this board has determined to exact from any company to whom its consent for the construction of a railroad on Broadway shall be granted in addition to the percentages of gross receipts which by law is required to be paid into the city treasury, such further compensation as shall be just and fair, bearing in mind that the object to be attained is not chiefly revenue, but the promotion of the public interest by securing an efficient and well-conducted railroad, which will afford the greatest accommodation to the public, with the least interference with the present use of the street or the pavement thereof, or the structures underneath the same;

And whereas a horse railroad can be easily constructed on Broadway, without any protracted interference with

the public travel on said street, or with the use thereof by carriages, trucks and other vehicles;

And whereas, in the judgment of the common council the public inducements offered by the petitioner in the proposed construction and operation of its railroad are superior to those which under the law can be offered by any other company; now, therefore,

Resolved, That the consent of this board be and the same is hereby granted, and permission of the common council is hereby given to said The Broadway Surface Railroad Company, to construct, maintain, operate and use a street surface railroad for public use in the conveyance of persons and property in cars upon and along the surface of the following streets, avenues and highways in the city of New York, to wit: Commencing at the southerly end of Broadway near the Battery and running thence with double tracks through and along Broadway, and across Fourteenth street to and along Union square to a point at or near the intersection of Fifteenth street and West Union square, together with the necessary connections, switches, sidings, turnouts, turntables and suitable stands for the convenient working of said road. And it is hereby further

Resolved, That the consent of the common council is given and granted to said The Broadway Surface Railroad Company for the construction, maintenance and use of its proposed railroad as aforesaid, upon the streets, avenues and route hereinbefore mentioned, expressly upon the following conditions and not otherwise:

First. The said railroad shall be constructed according to the most approved plan for the construction of city railroads, and with the most approved pattern of steel rails, which shall be laid in such manner as to interfere as little as possible with the use of the surface of the street by trucks, carriages and other ordinary vehicles, and the said connections, switches, sidings, turnouts, turntables and suitable stands which shall be necessary for the convenient working of said road, shall likewise be constructed after the most approved plan, and shall be

equal in all respects to the best of their kind now in use on any city railroads in the city of New York.

Second. The said railroad shall be operated by horse power only, and the cars to be run on said railroad shall be drawn by not less than two horses and shall each be provided with a conductor as well as driver; provided, however, that the said company may make use of any motive power suitable for the purposes of a street surface railroad other than locomotive steam power, which may hereafter be consented to by the local authorities and by a majority of the property owners, obtained in accordance with the provisions of chapter 252 of the Laws of 1884.

Third. The said company shall comply with all reasonable ordinances or regulations which the local authorities having charge of streets, avenues, roads or highways in the city of New York shall make as to the rate of speed, mode of use of tracks and removal of ice and snow from said tracks as the interest and convenience of the public may require; and this consent is likewise given upon the express condition that said company shall not charge any passenger more than five cents for one continuous ride from any point on its road or on any road or line or branch operated by it or under its control, to any other point thereon or on any connecting branch thereof within the limits of the city of New York, and if said company has acquired or shall hereafter obtain the right to run its cars upon the existing tracks of the Broadway and Seventh Avenue Railroad Company, or if the Broadway and Seventh Avenue Railroad Company has heretofore acquired or shall hereafter obtain the right to run its cars on the said railroad tracks proposed to be constructed by the Broadway Surface Railroad Company, but one fare of five cents shall be charged for the transportation of a single passenger over the whole or any portion of said respective tracks when run in such connection. Provided, further, that no railroad company shall be permitted to run any cars upon or over any portion of Broadway below Fifteenth street, unless upon the express condition of payment

being made into the city treasury of three per cent. during the first five years and five per cent. thereafter of the gross receipts from passengers riding upon any portion of the railroad tracks which may be constructed pursuant to this consent or permission. And said The Broadway Surface Railroad Company shall also, whenever and as required, and under the supervision of the proper local authorities, have and keep in permanent repair the portion of every street and avenue or highway upon which its tracks shall be constructed pursuant to this consent, between its tracks, the rails of its tracks and a space two feet in width outside of and adjoining the outside rails of its track or tracks so to be constructed, so long as it shall continue to use such tracks so constructed under the provisions of this resolution and consent.

Fourth. The said The Broadway Surface Railroad Company shall, for and during the first five years after the commencement of the operation of any portion of its railroad constructed, pursuant to this consent and permission, annually on the first day of November in each year, pay into the treasury of the city of New York, to the credit of the sinking fund thereof, three per cent. of its gross receipts for and during the year ending the next preceding thirtieth day of September, and also after the expiration of said five years, make a like annual payment of five per cent. of its gross receipts into the treasury of said city, to the credit of the sinking fund thereof, instead of three per cent.; and if under any provision of law the Broadway Surface Railroad Company shall permit the cars of any other street surface railroad company to run upon the railroad tracks to be constructed pursuant to this consent and permission, it shall likewise be the duty of said The Broadway Surface Railroad Company to pay or cause to be paid into the treasury of this city, to the credit of the sinking fund thereof, during the first five years an amount equal to three per cent., and after the expiration of five years an amount equal to five per cent. of the gross receipts of such other railroad company derived from passengers riding in

any of its cars on any portion of Broadway south of Fifteenth street; and that, too, whether any of such passengers enter or leave the said cars above or below Fifteenth street. And it shall be the duty of the president and treasurer of said The Broadway Surface Railroad Company, on or before the first day of November in each year, to make a verified report to the comptroller of the city of New York of the gross amount of its receipts derived from passengers riding in its cars for the year ending the next preceding 30th day of September, and the books of said company shall be open to inspection and examination by said comptroller or his duly appointed agents at all reasonable times for the purpose of ascertaining the correctness of said reports as to said gross receipts; and it shall be the further duty of the Broadway Surface Railroad Company to ascertain and keep, or cause to be kept, an account of the number of passengers carried in the cars of any other railroad company over any portion of the tracks of the Broadway Surface Railroad Company, constructed and laid pursuant to the provisions of this consent, in such manner as shall be approved by the comptroller of the city of New York. And it is the intention of this provision that for the purpose of computing the percentages to be paid into the city treasury pursuant to the terms and conditions of the consent or permission of the common council hereby given, each and every passenger riding in either direction on any part of Broadway south of Fifteenth street, upon or over any portion of the railroad tracks which shall be constructed by the Broadway Surface Railroad Company pursuant to this consent, shall be regarded as having paid five cents fare to the company in whose car he shall ride, and for the payment of the percentages on all fares received from such passengers by any railroad company using such tracks the Broadway Surface Railroad Company shall be responsible.

Fifth. And this consent of the common council is likewise given upon the express condition that said The Broadway Surface Railroad Company, in addition to the

percentages of gross receipts hereinbefore required to be paid by it into the city treasury, shall at the expiration of the first year from the date when the operation of its railroad shall commence and annually thereafter pay into the city treasury to the credit of the sinking fund thereof, by way of rent or as additional compensation, the sum of forty thousand dollars per annum, being equivalent to the interest on one million dollars at four per cent, and the said The Broadway Surface Railroad Company shall execute to the mayor, aldermen and commonalty of the city of New York a bond, with at least two sufficient sureties, to be approved as to form and sufficiency of the sureties by any justice of the supreme court in the first judicial district and department, in the penal sum of one hundred thousand dollars for the due and regular payment of said annual sum of forty thousand dollars and for the due and regular payment of the aforesaid percentages on gross receipts.

Sixth. And the consent herein given is granted likewise on the express condition that all the provisions of chapter 252 of the Laws of 1884, pertinent thereto, shall be complied with.

Seventh. And this consent and permission is given upon the further condition that said The Broadway Surface Railroad Company shall, within sixty days after the adoption by the common council of the foregoing resolutions, execute under the corporate seal, to be attested by its president or treasurer, and by virtue of a resolution of its board of directors, an instrument in writing, which shall be delivered to the comptroller of the city of New York, and which shall contain and express the acceptance by said company of the aforesaid consent and permission of the common council for the construction, use and operation by said company of its proposed railroad upon the streets and route above mentioned, upon the aforesaid terms and conditions upon which the said consent or permission is granted, and binding the said company to abide by, comply with, fulfill, perform and keep the terms and conditions aforesaid, and also binding the said company to

build, equip and commence to operate its proposed railroad within one year after it shall obtain the consent of the requisite number of property owners, or the report of commissioners, confirmed by the court, as required by the constitution and laws of this State, and likewise binding the said company to prosecute with diligence all necessary proceedings to perfect its right to build, construct and operate its proposed railroad, but no delays which may occur by reason of injunctions or hostile legal proceedings shall affect in any manner the consent or permission hereby granted, provided the said company shall proceed with reasonable diligence to build, complete and commence to operate its proposed railroad after the removal of such legal obstacles, and shall execute and deliver to the comptroller the obligation or instrument of acceptance aforesaid, within sixty days after the removal of such legal obstacles.

But it is further provided that in the event of the failure or neglect of the said company to make the said report, and the payment of the said percentages as hereinbefore directed and required, then and in that event the provisions of section 8, chapter 252 of the Laws of 1884, providing for a forfeiture of the rights, privileges and franchises of such company, shall be applicable.

Adopted by the common council, November 13, 1884.

Received from his honor the mayor with his objections thereto in writing, November 24, 1884.

Adopted by the common council, notwithstanding the objections of his honor the mayor, December 5th, 1884.

Order Appointing Commissioners.

At a general term of the supreme court held in and for the first judicial district and department, at the county court house, in the city of New York, on the 22d day of December, A. D. 1884.

Present: Hon. Noah Davis, presiding justice. Hon. John R. Brady, justice, and Hon. Charles Daniels, justice.

In the Matter of the Application of THE BROADWAY SURFACE RAILROAD COMPANY for the Appointment of Three Commissioners to Determine Whether the Railroad Described or Mentioned in the Articles of Association Filed for the Incorporation of said Company Ought to be Constructed, &c.

The Broadway Surface Railroad Company having heretofore presented to this court its petition, bearing date the 19th day of September, 1884, praying for the appointment of commissioners, pursuant to the provisions of the act entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages," passed May 6, 1884, to determine, after a hearing of all parties interested, whether the railroad of the said petitioner ought to be constructed and operated, and the said company having served upon the owners of the property bounded on that portion of the streets or highways in the city of New York upon which it is proposed to construct or operate its railroad, notice that application would be made by said company, pursuant to the provisions of said act to the general term of this court, held in and for the first judicial district and department, at the county court house, in the city of New York, on the first Monday of October, 1884, for the appointment of three commissioners for the purpose aforesaid; and on said day the said petitioner appearing by Robinson, Scribner & Bright, its counsel, and having presented to and filed with the court the petition aforesaid, together with said notice to property owners, and the said petitioner having submitted to and filed with the court the affidavits of Henry A. Robin-

son, William H. Dongan and William E. Haws, verified October 6th, 1884, and of Henry Rathyen, Henry Buchanan, E. T. McDonald, G. V. Powell, H. A. Robinson, G. W. Corner and A. C. Petrie, severally verified October 13, 1884, and of Wm. E. Haws, Wm. Parr and Horatio McIntire, severally verified October 14, 1884, and the affidavits of George W. T. Lord, verified October 22, 1884, and the affidavit of Samuel B. H. Vance, verified October 22d, 1884; and so much of the *City Record* of November 14th, 1884, as sets forth the resolutions of the common council of the city of New York, passed November 13th, 1884, giving its consent to the construction of the proposed railroad of the petitioner herein, and the resolution repealing and rescinding the former resolution of the common council passed August 30th, 1884; and so much of the *City Record* of December 6th, 1884, as sets forth the action of the common council on December 5th, 1884, adopting the said resolutions of November 13th, 1884, notwithstanding the objections of the mayor. And on said day and on subsequent days of the hearing of said application, the following appearances having been made on behalf of property-owners and others, to wit: Everts, Southmayd & Choate, Esqrs., for Charles E. Butler, trustee, and Mrs. Sarah Boreel; Franklin Bartlett, Esq., for Henry Mason; Thomas L. Ogden, Esq., for John Lee Smith, Henry T. Anthony, Samuel E. Lyon and James Hale, as executors of and trustees under the last will and testament of David Henry Haight, deceased, also for Harriet L. Schuyler and for the heirs of Eugene Langdon, deceased; and Charles P. Miller, Esq., of counsel for another corporation, the Broadway Railroad Company; E. H. Lacombe, Esq., counsel for the corporation, on behalf of Mayor Edson and the City of New York, and Hon. Elihu Root, United States district attorney, on behalf of the United States of America; Sutherland Tenney, Esq., for the Washington Building Company; Julien T. Davies Esq., for Robert C. Cornell; John L. Cadwalader, Esq., for Rutgers Leroy; John E. Parsons, Esq., for S. E. Lyon and others, trustees; Charles P. Miller, Esq., for S. Fear-

ing, and Eleanor Jay; and Charles Knox and C. E. Detmold having appeared by Chittenden, Townsend & Chittenden, their attorneys; and the affidavits of Edward L. Short, Robert C. Cornell, Edward B. Booth, Charles C. Beaman, Lucius E. Chittenden, severally verified October 16th, 1884; and of Charles P. Miller, verified October 13th, 1884; and of Lucius E. Chittenden, verified October 17th, 1884; and of Franklin Edson and Edward M. Knox, verified October 4th, 1884, and of George W. Wickersham, verified October 6th, 1884; and the answer of Charles Knox, and his motion to strike out the petitioner's affidavits and to dismiss the present application, and his objections to the appointment of Messrs. Vance and Lord as commissioners, also his objections to the admission or use of the affidavit of S. B. H. Vance, and the affidavit of George W. T. Lord, verified October 22d, 1884, having been filed, and the affidavit of Samuel B. H. Vance, verified October 10th, 1884, having been filed in opposition to said application, and Messrs Robinson, Scribner & Bright having been heard, of counsel for the petitioner, in support of said application, and the counsel for the parties appearing in opposition to said application having been heard, and due deliberation being thereafter had; and it appearing to the satisfaction of the court, from the said papers on file, that The Broadway Surface Railroad Company, the above-named petitioner, is a corporation duly incorporated under the said act, passed May 6th, 1884 (chap. 252), and that it has duly complied with all the provisions of said act with reference to its incorporation, and that it has since the passage of said act in good faith, and with due diligence, made efforts to obtain the consent in writing of the owners of the property bounded on that portion of the street or highway of the city of New York upon which it is proposed to construct and operate said railroad, to wit, that portion of Broadway particularly described in said petition, and that said company has failed to obtain and cannot obtain the consent of the owners of one-half in value of the property so bounded; and it further appear-

ing to the satisfaction of the court that notice of this application has been served on each property owner not having given his consent in writing so far as is required by the provisions of said act; and that said notice has also been served on each property owner, his agent or representative, as such owner, agent or representative appears upon the assessment roll of the city of New York last confirmed or completed, said assessment roll having been confirmed or completed on the 25th day of August, 1884.

Now, therefore, on reading and filing the petition and affidavits and proofs aforesaid, and on motion of Robinson, Scribner & Bright, attorneys for petitioner, it is

Ordered, that the motion made on behalf of Charles Knox to strike out the affidavits on the part of the petitioners, and to dismiss the proceedings, be severally denied; and it is further

Ordered, that Sidney S. Harris, Samuel B. H. Vance and George W. T. Lord be and they hereby are appointed commissioners to determine, after a hearing of all parties interested, whether the railroad described or mentioned in the articles of association which were filed and recorded in the office of the secretary of state for the incorporation of the petitioner, The Broadway Surface Railroad Company, ought to be constructed and operated upon that portion of the streets or highways of the city of New York which constitute the route of the railroad which said company was organized and incorporated to construct, maintain and operate; that is to say: Commencing at the southerly end of Broadway near the Battery, and running thence with double tracks through and along Broadway and across Fourteenth street to and along Union square to a point at or near the intersection of Fifteenth street and West Union square, there to connect with the now existing tracks in Union square or Broadway which run through Union square, Broadway and Seventh avenue to Central park or Fifty-ninth street, together with the necessary switches, sidings, turnouts, turn-tables and suitable stands for the convenient working of such road, with the proposed connections likewise

mentioned in said articles of association, and proposed to be made both at its northerly and southerly ends with existing railroads. And it is further ordered that the said commissioners, within ten days after their appointment, cause public notice to be given of their first sitting and of the time and place of holding the same, by publication in the New York *Tribune*, *The Sun* and *The Evening Mail and Express*, three newspapers published daily in the city of New York, every day for three days prior to such first meeting. And it is further ordered that at the time and place specified in said notice for such first meeting, and at such further time and place to which they may adjourn, the said commissioners gave public hearing to all parties interested, and determine, after such public hearing of all parties interested, whether the said railroad ought to be constructed and operated, and that they make a report thereon, together with the evidence taken, to this general term, within sixty days after their appointment.

Enter

NOAH DAVIS,
P. J.

SOUTH FERRY RAILWAY COMPANY.

An act to authorize the construction of a railway from Vesey street through certain streets in the city of New York to the South ferry.

(Laws of 1874, Ch. 508, p. 697.)

Passed May 20, 1874.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. James Rogers, John Flannagan, Theodore P. Rutan, Michael Flannery, Horace J. Haviland, William Herrick, Martin V. Foreman, their associates and assigns, are hereby authorized and empowered to construct, operate, maintain and use railways, with single or double tracks, in the city of New York, and to convey passengers thereon for compensation through, upon and

along the following routes of said city to wit: Commencing at the northerly side of Vesey street; thence through and upon and along Church street, with double track to Morris street; thence through, upon and along Morris street, with a double track to Greenwich street; thence through, upon and along Greenwich street, with a double track to Battery place; thence through, upon and along Battery place, with a double track to State street; thence through, upon and along State street with a single track to Whitehall street; thence through, upon and along Whitehall street with a single track to the South ferry; returning through, upon and along Whitehall street to Bowling Green; thence through, upon and along the southerly side of Bowling Green to connect with double tracks to Battery place, together with the necessary connections, crossings, switches, turnouts and convenient stands, for the proper workings and accommodation of said railway on the said route.

§ 2. The said railway shall be constructed on the most approved plan for the construction of city railways, and the cars shall be run as often as the convenience of the public may require; and the said persons and their assigns are hereby authorized to charge and collect three cents for each passenger conveyed upon said railway. Wherever the track or tracks of said railway shall cross or intersect the track or tracks of any railway, by mutual agreement between the owners of said respective railways, transfer tickets may be issued to passengers at an additional rate of fare not exceeding three cents, said transfer tickets to be received in full for fare, to any point on the line of said connecting railways, or either of them, and said railway shall be subject to such reasonable rules and regulations as the common council of the city of New York from time to time may prescribe. The said persons or their assigns shall annually, on the first day of November, pay into the treasury of the city of New York one per cent. of the gross receipts of the road herein provided for, the amount of which gross receipts shall be determined by the sworn statement of the president and treasurer of said railway, but subject

to the inspection of its books by the comptroller of the city of New York.

§ 3. If it shall become necessary, in the construction, operation and use of said railway upon the route or routes herein designated, for the said persons or their assigns to run upon, intersect or use any portion of other railroad tracks now laid upon any of the said streets, the persons hereby authorized to construct and operate said railway are hereby authorized and empowered to run upon, intersect and use the same upon such terms as may be agreed upon between them and the owners of such other railroad. In case no terms of compensation for such operating and use can be agreed upon between the parties, then the amount of such compensation shall be ascertained and determined in the manner provided by subdivision six of the twenty-eighth section of the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty. The persons hereinbefore mentioned, their successors and assigns, shall have power to acquire title to the right to use such real estate as may be required for the purposes of said railway, in the manner provided in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-first sections of said act of April second, eighteen hundred and fifty, except that in any of the proceedings for this purpose it shall not be necessary that the petition to the supreme court shall make any allegation of or reference to any incorporation, capital stock, surveys or maps, or of the filing of any certificate of location, and during the pendency of such proceedings, the said persons or their assigns shall be permitted to enter upon, connect with and use portions of other tracks already laid in any of the streets named herein, as may be necessary to perfect and carry into effect the provisions of this act, upon their giving good and sufficient security, to be approved by one of the justices of the supreme court, for the payment of the amount of the award, which may be made by arbitration or by order of the supreme court, and all actions and proceedings in law relating to,

affecting or arising under this act, or the authority hereby given, shall be commenced in the supreme court of the first judicial district, and shall have preference over all cases on the calendar of said court not now preferred by statute, but in all cases the use of said streets for the purposes of said railway, as herein authorized, shall be considered one of the uses for which the mayor, aldermen and commonalty of said city of New York hold said streets

§ 4. The first three persons or grantees named in the first section of this act shall, as soon as practicable, after its passage, by a notice in writing, signed by them, convene a meeting of the persons or grantees named in said first section, or their assigns, at a time and place, in the city of New York, to be designated in said notice. A copy of said notice shall be served upon each of the said grantees, or their assigns, either in person or by depositing the same in the post-office, addressed to him at the post office nearest his last-known place of residence or business, at least twenty days before the day therein specified for such meeting. Two-thirds of the persons named, or their assigns, at said meeting shall be competent to organize, and shall possess the corporate powers necessary to carry out the purposes of this act.

§ 5. The legislature may at any time alter, amend or repeal this act.

§ 6. This act shall take effect immediately.

An act to amend chapter five hundred and eight of the Laws of Eighteen hundred and seventy-four, entitled "An act to authorize the construction of a railway from Vesey street through certain streets in the city of New York to the South ferry."

(Laws of 1875, Ch. 393, p. 455.)

Passed May 19, 1875.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section two of chapter five hundred and eight of the Laws of Eighteen hundred and seventy-four, entitled "An act to authorize the construction of a rail

way from Vesey street through certain streets in the city of New York to the South ferry," is hereby amended so as to read as follows:

§ 2. The said railway shall be constructed on the most approved plan for the construction of city railways, and the cars shall be run as often as the convenience of the public may require; and the said persons and their assigns are hereby authorized to charge and collect five cents from each passenger conveyed upon said railway. Wherever the track or tracks of said railway shall cross or intersect the track or tracks of any railway, by mutual agreement between the owners of said respective railways, transfer tickets may be issued to passengers at an additional rate of fare not exceeding three cents, said transfer tickets to be received in full for fare to any point of the line of said connecting railways, or either of them, and said railway shall be subject to such reasonable rules and regulations as the common council of the city of New York from time to time may prescribe. The said persons or their assigns shall annually, on the first day of November, pay into the treasury of the city of New York two per cent. of the gross receipts of the road herein provided for, the amount of which gross receipts shall be determined by the sworn statement of the president and treasurer of said railway, but subject to the inspection of its books by the comptroller of the city of New York.

§ 3. This act shall take effect immediately.

Chambers and Grand Street Ferry Railroad Co.

Resolution of the Common Council.

In common council.

Resolved, That the consent of this board be and the same hereby is given and granted, and the consent, permission and authority of the common council is hereby given to the Chambers Street and Grand Street Ferry Railroad Company, to construct, maintain and operate a street surface railroad, with the necessary sidings, switches, turnouts and turn-tables, through, upon and along the surface

of the following named slip, streets and highways in the city of New York, to wit:

Commencing at the foot of Roosevelt street, East river, thence through, upon and along South street, with double tracks to James slip; thence through, upon and along James slip, with double tracks to New Chambers street; thence through, upon and along New Chambers street to Chatham street, with double tracks; thence across Chatham street to Chambers street, with single track; thence through, upon and along Chambers street, with single track, to Pavonia Avenue ferry, foot of Chambers street, North river; thence returning, with single or double tracks, through, upon and along West street to Duane street; thence through, upon and along Duane street, with single track to and across Chatham street to connect with their double tracks at New Chambers street. Also from New Chambers street, at Madison street, through, upon and along Madison street, with double tracks to Grand street; thence through, upon and along Grand street, with single or double tracks to the ferry at the foot of Grand street. Also, from Madison street, at Jackson street, through, upon and along Jackson street, with double or single tracks to Cherry street; thence through, upon and along Cherry street, with double or single tracks to the East river; thence through, upon and along East street, with double or single tracks, to connect with their tracks at the foot of Grand street, East river.

The foregoing consent, authority and permission is given and granted to said company, upon the following conditions:

First The said railroad shall be operated by horse power.

Second. The said railroad and the said sidings, switches, turn-outs and turn-tables, shall be constructed upon the best plan for the construction of street surface railroads, sidings, switches, turn-outs and turn-tables in use in said city at the date of their construction, and the material used in such construction shall be of the best quality and

of the most approved pattern, which plan of construction, quality and pattern of material, number and location of sidings, switches, turn-outs and turn-tables, shall be subject to the approval of the commissioner of public works of said city.

Third. The said corporation shall comply with each and every of the provisions of chapter 252 of the Laws of 1884 pertinent thereto.

Fourth. The foregoing consent is given and granted upon the express condition that the provisions of chapter 252 of the Laws of 1884 pertinent thereto shall be complied with.

Adopted by the board of aldermen, November 26, 1884.

Received from his honor the mayor, December 8, 1884, with his objections thereto.

In board of aldermen, December 30, 1884, taken up, reconsidered as provided in section 75, chapter 410, Laws of 1882, and adopted notwithstanding the objections of his honor the mayor, three-fourths of all the members elected voting in favor thereof.

NEW YORK, April 14, 1885.

I hereby certify the foregoing to be a correct copy of the original on file in the office of the clerk of the common council, and in testimony thereof I have hereunto caused the seal of the corporation of the city of [SEAL.] New York to be affixed this fourteenth day of April, A. D. 1885.

F. J. TWOMEY,
Clerk Common Council.

AVENUE C RAILROAD COMPANY.

An act to authorize the construction of a railroad in Avenue C and other streets and avenues in the city of New York.

(Laws of 1868, Ch. 625, p. 1318.)

Passed May 6, 1868.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1 Alfred B. Darling, Austin D. Thompson, Isaac H. Smith, T. B. Brockway, Benjamin F. Buck,

Amos C. Bell, William T. Ashman, H. M. Williams, William H. Paulding, John Quinn, Henry Vanderwater, N. S. Parkhurst, Martin Holmes, James Griffiths, William H. Maynard, William B. Whiteman, George McMullin, Edwin S. Beers, Israel Tupper, Stephen Axtell, Phineas W. Sprague, Alfred West, John J. Walsh, John E. Crouley, George H. Starr, Charles H. Davis, Richard D. McGraw, Michael Delehanty, Charles White, C. A. Bunner, David H. Printup, George H. Welsh, Henry Lansing, Edgar Brower, James Moncrief, Lewis D. Potee, Edward C. Byrne, John H. Johnson, Thomas Clements, Shepard F. Knapp, James McCusker, Henry Leonard, Charles Freeland, James M. Taylor, Joseph A. Jameson, John A. Cooke, William M. Pullis, and their assigns, are hereby authorized and empowered to lay, construct, operate, maintain and use a railroad with a double or single track, as hereinafter provided, and to convey passengers thereon, for compensation, through, upon and along the following streets or avenues, route or routes, in the city of New York, viz.: Commencing at the intersection of Duane street with West street, thence through and along Duane street with a double track to Greenwich street, thence through and along Greenwich street with a single track to Charlton street, thence through and along Charlton street with a single track to Prince street, thence through and along Prince street with a single track to Bowery, thence upon and across the Bowery with a single track to Stanton street, thence through and along Stanton street with a single track to Pitt street, thence through and along Pitt street with a single track to Avenue C, thence through and along Avenue C, with a single track to Third street, thence through and along Avenue C, from Third street with a double track to the northern extremity of the said Avenue C, thence through and along Third street, connecting with the double track in Avenue C, with a single track to First avenue, thence through and along First avenue with a single track to East Houston street, thence through and along East Houston street with

a single track to the Bowery, thence upon and across the Bowery with a single track to West Houston street, thence through and along West Houston street, with a single track to Washington street, thence through and along Washington street with a single track to Duane street; thence through and along Duane street, connecting with the double track to the place of beginning, together with the necessary connections, turnouts, switches and appurtenances, for the proper working and accommodation of the road on the said route or routes.

SEC. 2. Said railroad shall be constructed on the most approved plans for the construction of city railroads, and with the rail now used upon the street railroads in Philadelphia, commonly called the Philadelphia rail, and shall be run as often as the convenience of passengers may require, and shall be subject to such reasonable rules and regulations in respect thereto as the common council of the city of New York may from time to time by ordinance prescribe; and to the payment to the city of the same license fee, annually, for each car run thereon, as is now paid by other city railroads in said city; and the said persons or their assigns are hereby authorized to charge the same rate of fare for the conveyance of passengers on said railroad as is now charged by other city railroads in said city; and the said persons or their assigns shall pay to the sinking fund commissioners of the city of New York, the sum of one thousand dollars per annum, to be applied by them in the same manner as moneys received on account of rentals and leases.

SEC. 3. In the construction, use or operation of such railroad upon the route or routes above designated, should such persons above named, or their assigns, deem it necessary or proper to run upon, intersect or use any portion of other railroad tracks now laid upon any of the streets or avenues above named, they are hereby authorized to run upon, intersect and use the same, and in case they cannot agree with the owner or owners thereof respecting the compensation or payment to be made therefor, then the amount of such compensation or payment shall be ascer-

tained and determined in the manner provided by subdivison six of the twenty-eighth section of the act entitled "An act to authorize the formation of railroad corporations and to regulate the same," passed April second, eighteen hundred and fifty. In all cases, the use of said streets and avenues for the purposes of said railroad as herein authorized, shall be considered a public use, consistent with the uses for which the mayor, aldermen and commonalty of said city shall hold said streets and avenues. The expense of constructing the tracks in Greenwich and Washington streets, as herein authorized and provided, shall be borne equally by said persons and their assigns and any company which is now or shall hereafter be authorized to construct a track therein, and thereupon the said tracks shall be used in common by the said persons or their assigns and such company. But where a double track is now laid in any avenue or street herein described nothing in this act contained shall be construed to authorize the laying of an additional track or tracks therein, the doing of which is hereby prohibited. It shall be and is made the duty of said company to keep its track clear of snow and ice.

SEC. 4. This act may at any time be amended, modified or repealed.

SEC. 5. All provisions of law inconsistent with this act are hereby repealed.

SEC. 6. This act shall take effect immediately.

An act to authorize the Avenue C Railroad Company of the city of New York to extend their railroad tracks through certain streets and avenues of the city of New York.

(Laws of 1871, Ch. 19, p. 24.)

Passed February 2, 1871.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The Avenue C Railroad Company of the city of New York is hereby authorized to extend

their railroad tracks in Avenue C through Seventeenth and Eighteenth streets, by *single track in each street; to* Avenue A, thence through and along Avenue A, by double track to Twenty-third street; thence through and along Twenty-third street, by double track to First avenue; thence through and along First avenue, by double track, to Thirty-sixth street; thence through and along Thirty-sixth street, by single track, to Lexington avenue; and also through and along Thirty-fifth street, by single track, from First avenue to Lexington avenue; thence through and along Lexington avenue, by single or double track, to Forty-second street; thence through and along Forty-second street, by double track, to Fourth avenue. Also, by single track, through and along Charlton street, from Greenwich street to West street; and, by single track, through and along West Houston street, from Washington street to West street; thence through and along West street by double track, to Chambers street. Also, through and along Tenth street, connecting with the double track in Avenue C, by single track to Avenue D; thence through and along Tenth street, by double track, to the East river. Also, connecting with the double track on Tenth street, through and along Avenue D, by single track, to Eleventh street; thence through and along Eleventh street, by single track, to and connecting with the double track on Avenue C, together with the necessary switches, curves, turnouts, and side tracks for the complete operation of their said railroad and the extension herein provided for.

SEC. 2. In the construction, operation or use of said road, as hereby authorized to be extended or constructed upon the streets and avenues above designated, should said company deem it necessary or proper to run upon, intersect or use any portion of other railroad tracks now laid, or which may hereafter be laid, upon the streets and avenues above mentioned, then said company is hereby authorized to run upon, intersect and use the same; and in case agreement shall not be made with the owner or owners of such other railroad tracks in respect

to the compensation or payment to be made therefor, then the amount of such compensation or payment shall be ascertained and determined in the manner provided by subdivision six of the twenty-eighth section of the act entitled "An act to authorize the formation of railroad corporations, and to regulate the same," passed April second, eighteen hundred and fifty.

SEC. 3. In the construction, use and operation by the said company of the tracks and extensions authorized by this act, the company shall have and exercise the same rights and privileges which are now possessed and exercised under former grants and laws; and may use said road in connection with roads of other railroad companies in the said city, upon such terms as may be agreed upon between said company and other railroad companies, and said company is hereby authorized to lease all or any portion of their said road, or to consolidate the same with any other railroad company in said city or State, with which said road may intersect or connect, or may lease the tracks, or any portion thereof, belonging to any other railroad companies.

SEC. 4. The Avenue C Railroad Company shall make compensation to the mayor, aldermen and commonalty of the said city of New York for the value of the rights and privileges herein granted or authorized, which compensation shall be ascertained and determined in the manner, as far as applicable, provided for fixing compensation for railroad rights and privileges by the aforesaid general railroad act; that is to say, before said additional tracks or extensions shall be put in practical operation, or said rights and privileges be made available, the said company shall apply to the supreme court for the appointment of three commissioners to appraise and determine the amount of compensation which shall be paid annually, or in a gross sum, to the mayor, aldermen and commonalty, as such compensation for the rights and privileges herein granted. Such application shall be made on not less than ten days' notice to the said mayor, aldermen and commonalty, of the time, place and object thereof. The decision of the said commissioners so appointed, or a major-

ity of them, as to the amount of such compensation, shall be final and conclusive as to the said company and the said mayor, aldermen and commonalty of said city; the amount so fixed and determined shall be paid the commissioners of the sinking fund of said city, by the said company, within thirty days after the same becomes payable according to the decision aforesaid, and applied to the reduction of the debt of said city.

SEC. 5. This act shall take effect immediately.

LEXINGTON AVENUE AND PAVONIA FERRY.

Consent of common council to construction of street railroad along Lexington avenue between Forty-second street and One hundred and sixteenth street.

Whereas, the Houston, West Street and Pavonia Ferry Railroad Company, a corporation duly incorporated and existing under and by virtue of the laws of this State for the purpose of providing street railroad facilities for compensation in the city of New York, heretofore made application in writing to the common council of the city of New York for consent to the construction, maintenance, use, operation and enjoyment of a street railroad upon and through the streets and avenues in said city, mentioned in said application, dated the 28th day of September, 1892, which application is in words and figures as follows, to wit:

To the honorable the common council of the city of New York:

Now, at this day, comes the Houston, West Street and Pavonia Ferry Railroad Company, which is and has been since the year 1874 a street surface railroad corporation, created and existing under and by virtue of the laws of the State of New York; said corporation states that it now owns and is operating certain lines of street surface railroads in said city, among them a line on and over the surface of Lexington avenue in said city, from Thirty-fifth street by single track to Thirty-sixth street, and from thence by double track to Forty-second street in said city,

and along said Forty-second street west to Grand Central depot; that it also owns, and is operating in connection therewith, a line on Thirty-fifth and Thirty-sixth streets in said city, extending from said Lexington avenue over said street to First avenue, and along said avenue to Thirty-fourth street ferry over the East River. Said corporation further says that it has filed in the offices in which its certificates of incorporation are filed a statement and certificate duly authenticated according to law by its board of directors, setting forth the fact that it is a corporation, and that it owns and is operating a system of street surface railway, of which the roads hereinabove mentioned are a part, and also a description of Lexington avenue in said city, and that it desires and proposes to extend a double track line of street surface railway over the said Lexington avenue, the street, road and highway therein described, from the intersection of its present line on Lexington avenue with Forty-second street upon and over said Lexington avenue to Ninety-eighth street, and when the avenue is further opened to the Harlem river; said corporation further says that it has procured the consent in writing, acknowledged as are deeds entitled to be recorded, of the owners of one-half in value of the property bordering on said Lexington avenue, situated between Forty-second street and Ninety-eighth street, that said corporation may construct, build, maintain and operate a line of street surface railroad upon the surface of said Lexington avenue, along and over the same from said Forty-second street, as aforesaid, to Ninety-eighth street in said city, and that said corporation may operate said road, when built, by animal or horse power, or by cable, electricity, or any power other than locomotive steam power. Said corporation further says that it now owns and is operating in the city of New York, as a part of one system, 31.20 miles of railway; that the extension to Ninety-eighth street, herein described, if made, will be about 2.75 miles in length, and from Ninety-eighth street to Harlem river about 1.76 miles; that said extension will become and be a part of said system and con-

nected therewith; that the building of the same will greatly accommodate the public and promote the convenience thereof, and will give additional street surface railway facilities for travel along and over said street where said extension is sought to be made, and will enable applicant to transport persons from all points on its system over the extension, as a part of a continuous line, to their destination, for one fare.

Wherefore, said corporation hereby applies to the local authorities of the city of New York for the consent thereof to build, extend, maintain and operate a double-track line of street surface railway, in connection with its present system, upon, along and over the surface of said Lexington avenue, in said city, from Forty-second street to Ninety-eighth street, in said city, with the privilege to extend the same to the Harlem river in the future, when the streets of said city are prepared therefor, and when said corporation shall qualify itself so to do, between said Ninety-eighth street and said Harlem river.

Said corporation further says that in making this application, it will, if granted, keep and perform all of the conditions, requirements and obligations required of it by law as conditions upon which said privilege may be granted, and that it will keep and observe, in all respects, the laws to which this application is subject, if granted.

Wherefore, it prays that this application be granted, and that it be allowed to construct, build, maintain, extend and operate its double line of railway from said Forty-second street, connecting there, with its present line on and over said Lexington avenue to Ninety-eighth street, in said city, and to continue the same under the conditions herein stated in the future to the Harlem river.

And said corporation hereby applies also, as a part of this petition, for permission to build, lay down, establish and maintain a branch line of double track railroad, from a connection with its track when laid down on Lexington avenue, as hereinbefore proposed, at a junction of that avenue with One hundred and sixteenth street, on and

over said One hundred and sixteenth street, from said junction to Morningside park to the East river.

THE HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD COMPANY,
By JOHN D. CRIMMINS,
President.

And whereas, the said common council caused public notice of such application and of the time and place when the same would be first considered, to be given by a notice thereof published daily for at least fourteen days in two daily newspapers of the city of New York, which has been done in the following papers, to wit, the "Sun" and "News," which papers were lawfully designated for that purpose by his honor the mayor of said city, according to law; and

Whereas, on the 28th day of September, 1892, at twelve o'clock noon, at the chamber of the board of aldermen of said city, that being the time and place designated in said notice for a meeting of the common council of said city, said application was first considered, and all who desired to be heard at said time and place were then and there heard by said common council; now, therefore, pursuant to law, it is

Resolved, That the consent of the common council of the city of New York be, and is hereby given to the construction, use and operation of a street surface railroad upon and over the streets and avenues mentioned in said application, on the conditions hereinafter named, and as a branch or extension of the Houston, West Street and Pavonia Ferry Railroad Company; that is to say, commencing at a connection with the tracks of said railroad company at Forty-second street, where the same are at present laid thereon, at a junction of said street with Lexington avenue; thence on and over said Lexington avenue, with double tracks to Ninety-eighth street, and thence on and over said Lexington avenue, after the same shall have been opened and prepared for further construction and extension of said double tracks on said avenue from

said Ninety-eighth street to Harlem river, with further construction, extensions from the junction of One hundred and sixteenth street and Lexington avenue, through One hundred and sixteenth street, to Morningside park and to the East river, as stated in its statement and certificate filed and made part hereof; and be it further

Resolved, That the conditions upon which, and not otherwise, the said consent is hereby given, shall be and are as follows, to wit:

Second. That the right, privilege and franchises of using the said streets and avenues to construct, maintain, use and operate a street surface railroad upon the said streets as a branch or extension of the road of the applicant, shall be sold at public auction to the bidder, which shall be a duly incorporated railroad corporation of this State, organized to construct, maintain and operate a street railroad in the city of New York, for which consent may be given, and which will agree to give the largest percentage per annum of the gross receipts of said branch or extension as defined by section 93 of the general railroad law, with adequate security by a bond or undertaking in writing and under seal in such form and amount, and with such conditions and securities as shall be required and approved by the comptroller of said city for the fulfillment of the said agreement and for the commencement and completion of such road according to the plan or plans and on the route fixed for its construction within the time designated and prescribed therefor by the laws now prevailing and applicable thereto.

Third. That the bidder to which the aforesaid sale shall be made, shall construct and put in operation a double-track cable railroad upon said branch or extension, with all necessary equipment and fixtures in the way of machinery, power and power houses as shall be necessary for the operation of a first-class cable road, the material and work to be of the best possible character, the plans of street construction, quality and pattern of materials therefor, number and location of sidings, connections with power houses and other railroad turnouts and turn-

tables, to be subject to the approval of the commissioner of public works of said city.

Fourth. The cars shall be run upon such branch or extension as frequently as the convenience of the public may require. And if the right to construct or operate said branch or extension shall be purchased at said sale by the company applying for this consent, the same shall be operated as a part of a continuous line of the line of the applicant, so as to enable any passenger, by transfer tickets or otherwise, to obtain the benefit of a continuous ride for one fare to or from any point on said branch or extension and any point on the lines of railroads of the company applying for this consent, whether the same be owned or leased by said company. And if the right to construct said branch or extension shall be purchased at said sale by any corporation other than the applicant for this consent, the said purchaser shall deliver and receive passengers at the point of junction at Forty-second street with the road of the applicant upon a division of earnings from such joint business, in the proportion that the length of the extension or branch so sold shall bear to the entire length of the road of the company applying for this consent, whether owned or leased, together with the mileage of such branch or extension.

This consent is further conditioned that if the right to construct and operate said branch or extension shall be purchased by the company applying for this consent, the percentage to be paid upon gross receipts on behalf of said branch or extension shall be calculated on such portion of the gross receipts of the applicant as shall bear the same proportion to the whole amount thereof as the length of such extension or branch shall be to the entire length of its road, owned or leased. This consent is further conditioned that no passenger shall be charged more than five cents for a continuous ride upon, from or to the above branch or extension, under the conditions as to connections herein in this section provided.

Fifth. And this consent is further conditioned that the successful bidder at said sale to whom this consent for the

construction and operation of said branch or extension shall be awarded, shall deposit, at the time of said sale, with the comptroller of said city, conducting the sale, to the order of the mayor, the sum of one million dollars, which shall be, by the said mayor, deposited in some trust company or national bank of the city of New York as a special deposit, subject to the conditions as follows:

Said money to be held as security that the said railroad, to the construction of which consent is hereby given, shall be in good faith built and put in operation as contemplated by this consent, within the time or times fixed by law, and as expenditures upon said railroad for property, fixtures, machinery, street work, equipment and cable railroad appurtenances shall progress, said special deposit shall be subject to drafts of the corporation engaged in said work, upon certificate of the commissioner of public works, that an amount equal to the amount drawn from time to time from said fund has been expended in good faith upon or for the purposes of said railroad, as herein in this consent provided.

And if, at the expiration of two years from the time of said sale, said road shall not have been constructed and be in operation, the said fund then on deposit shall be forfeited to said city. And in case of failure on the part of any successful bidder at said sale to make such deposit at the time of such sale, a resale shall be immediately made upon the terms and conditions herein provided.

Adopted by the board of aldermen Sept. 29, 1892.

Approved by the mayor October 8, 1892.

Houston, West Street and Pavonia Ferry.

Resolution of the common council authorizing railroad in Lexington avenue below Thirty-sixth street and in East Twenty-third street.

In common council.

Now, at this day come the Houston, West Street and Pavonia Ferry Railroad Company and the Broadway and Seventh Avenue Railroad Company, and herewith make

and file this application before said authorities to be allowed to build the branch and extended lines of the railway hereinafter fully described.

Said Broadway and Seventh Avenue Railroad Company says that it is a street surface railway company organized and existing under and by virtue of the Laws of the State of New York, and that as such corporation has built and now owns and leases a double-track line of railway from South ferry in said city, on and over the surface of Broadway, to a point thereon north of Forty-fourth street, and thence over Seventh avenue to Central park in said city. That said line on said route between said points crosses Twenty-third street at a junction thereof with Broadway; that Lexington avenue is a public road, street and highway in said city of New York, and extends north and south therein, from Gramercy park in said city, to Harlem river; that Twenty-third street in said city is also a public street, road and highway, and extends east and west through said city.

The said corporation has filed in each of the offices in which its certificate of incorporation is filed a statement and description of Twenty-third street from its junction with Broadway to its junction with Lexington avenue, and of said Lexington avenue from its junction with Twenty-third street to and across Twenty-seventh street in said city; and that said corporation desires to build and establish a branch and extended line of its road agreeably to law, from a point at or near where its present tracks cross Twenty-third street, with suitable curves and appliances along and over Twenty-third street to Lexington avenue, and from said Twenty-third street where said Twenty-third street crosses Lexington avenue, on and over Lexington avenue to Twenty-seventh street to a connection and union with the extended line to be built thereon by the Houston, West Street and Pavonia Ferry Railroad Company, if this application be granted.

The Houston, West Street and Pavonia Ferry Railroad Company states that it is also a street surface corporation, operating in the city of New York and organized and

created under, and by virtue of the laws of the State of New York, and as such owns and operates a double track line of street surface railway on and over Lexington avenue, between Thirty-sixth and Forty-second streets in the city of New York, and a single track from Thirty-sixth to Thirty-fifth street on Lexington avenue, and along said Forty-second street to the Grand Central depot. That it also has, owns and operates a line of railway on Thirty-fifth and Thirty sixth streets in said city, from Lexington avenue east to First avenue, and along said First avenue to the Thirty-fourth Street ferry, over East river.

Said corporation further says that it has filed a statement and certificate in the offices where its certificate of incorporation is filed, giving therein a description of Lexington avenue, from Thirty-fifth and Thirty sixth streets to Twenty-seventh street in said city, and that it proposes to extend its road along and over said Lexington avenue, so described to said Twenty seventh street from Thirty-fifth street by double track, and by single track from Thirty-sixth to Thirty-fifth street.

Said applicants further state that the Houston, West Street and Pavonia Ferry Railroad Company has, by virtue of its corporate powers and privileges, leased the Broadway and Seventh Avenue Railroad Company's line, and is now operating the same as a part of one system of railway with its own lines; that the distance from the point in Twenty-third street at or near where the tracks of the Broadway and Seventh Avenue railroad cross the tracks of the Twenty-third Street line, and thence over Twenty-third street to Lexington avenue, and over said avenue to Twenty-seventh street is less than one half mile; that the distance between Thirty-sixth street and said Twenty-seventh street, over which the Houston, West Street and Pavonia Ferry Railroad Company wishes to extend its line to a connection and union with the proposed Broadway and Seventh Avenue branch line is less than one-half mile.

That the Broadway and Seventh Avenue Company, as aforesaid, is now unable to give its patrons, customers

and the public continuous transportation over its lines as now existing to or a connection with the Thirty-fourth Street ferry or the Grand Central depot; that it will be a very great public convenience if it be allowed to furnish such transportation over a continuous line for one fare to those desiring to pass over its lines to either side of said points.

That the Broadway and Seventh Avenue Railroad Company desires to construct or establish less than one-half mile of branch railroad from its own tracks at or near where they cross the Twenty-third Street Railroad line with suitable curves and appliances over Twenty-third street and Lexington avenue, and from a junction of said Lexington avenue with Twenty third street over said Lexington avenue to Twenty-seventh street to a connection and union with the extended lines of the Houston, West Street and Pavonia Ferry Railroad Company on Lexington avenue, as is applied for by said Houston, West Street and Pavonia Ferry Railroad Company in this application; that the Houston, West Street and Pavonia Ferry Railroad Company agrees to give transfer tickets at its junction with the Broadway and Seventh Avenue railroad, so extended by its branch line, so that passengers may reach the Grand Central depot and the Thirty-fourth Street ferry over the tracks of the Houston, West Street and Pavonia Ferry Railroad Company's road for one fare; that to enable the Broadway and Seventh Avenue Railroad Company to utilize the grant herein asked for and to establish said branch and extended lines to a connection and union with the lines of the Houston, West Street and Pavonia Ferry Railroad Company's tracks, as aforesaid, it will proceed to agree with the Forty-second Street and Grand Street Ferry Railroad Company upon the terms upon which the said Broadway and Seventh Avenue Railroad Company may use intervening tracks of the Forty second Street and Grand Street Ferry Railroad Company on Twenty-third street, between Broadway and Fourth avenue, a distance of less than one thousand feet, and in the

absence of such agreement, will in pursuance of law, if authorized to build or establish said branch and extension to a connection and union, as aforesaid, apply through the courts for commissioners under the statutes of New York for the right to establish its branch and extended line in part over said intervening tracks, and said Houston, West Street and Pavonia Ferry Railroad Company, if this application be granted, will, under like circumstances, procure the right to pass over that part of the line of New York and Harlem Railroad Company lying between Thirty-second and Thirty-fourth streets, on Lexington avenue, being a distance of less than one thousand feet.

Applicants say, that with these connections so made and established said extension and branch will be used as a part of a continuous route for one fare to the Thirty-fourth Street ferry and to the Grand Central depot, either by running of cars through or by giving transfer tickets for one fare; that the creation, establishment and extension of said branch and extended lines will unite two street surface railway routes, to wit, the routes of the applicants herein, at a point not over one-half a mile from the respective lines or routes of applicants as they now exist prior to said extension, and the establishment of said branch line, and will establish thereby a new route for public travel; which applicants consent to operate, as a part of their continuous routes for one fare.

Applicants allege that said branch and extension lines cannot be operated as an independent railroad, without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with the said railroads now existing.

That the entire length of applicants' – owned and operated by perpetual leases is 31.20 miles of double track road.

That the Twenty-third Street Railroad Company will permit the Broadway and Seventh Avenue Railroad Company to use its tracks on Twenty-third street, between Fourth avenue and Lexington avenue; and as a part of

this application, said companies agree and promise that they will pay a reasonable compensation for running over the tracks of any intervening railroad, if they are permitted so to do, and will keep and perform all the conditions of law applicable to the construction and establishment of such branches and extensions, the right to build which is herein applied for.

Wherefore, they most respectfully pray that this application be granted, and that the public authorities consent thereto.

THE HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD COMPANY,
By JOHN D. CRIMMINS, President.
THE BROADWAY AND SEVENTH AVENUE RAILROAD COMPANY,
By D. B. HASBROUCK, Vice-President.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

MICHAEL F. BLAKE,
Clerk Common Council.

And whereas, said joint application contemplates the connection and union of two street surface railroads at a point not over one-half mile distant from their respective lines or routes as they now exist, and to establish by the construction of such new connection a new and continuous route for public travel; and

Whereas, said corporations making said applications did therein and do hereby consent to operate said new route when such connection and union is made as a part of a continuous route for one fare, either by a continuous ride or by transfer ticket; and

Whereas, the said common council caused public notice of such application, and of the time and place when the same will be first considered, to be given by a notice thereof, published daily for at least fourteen days prior to a hearing, in two daily newspapers of the city of New

York, to wit: the "Sun" and the "News," which papers were lawfully designated for that purpose by his honor the mayor of said city; and

Whereas, on the twenty-eighth day September, 1892, at eleven o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in said notice, a meeting of the common council of said city was held and said application was first considered by said common council; and

Whereas, it appears to the local authorities, upon a hearing had of said application, as provided by law, that said connection and new route cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public's advantage that the same be operated as a continuous line or route with the existing railroads of the applicants for one fare, either by continuous ride or transfer tickets, that the public convenience requires the same; it is

Resolved, in pursuance of law, that the consent of the common council of the city of New York be, and is hereby given to said companies to construct, maintain, use, and operate upon the streets in said application described, upon conditions hereinafter named and not otherwise, the extensions and branches aforesaid as street railroads upon the express condition that the corporation or corporations making such connection, extensions or branches, shall pay into the treasury of said city annual percentages provided for extensions or branches in the laws as they now exist. Be it further

Resolved, That the consent of the common council to said petition is hereby given on the further express condition that said applicants, each of them, will do and perform all that the law requires in such cases, and shall be subject to all the limitations thereof.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York, on the 29th day of Sep-

tember, 1892, a majority of all members of such board voting in favor of said resolution, and four members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me, after it had been approved by the mayor of the city of New York, on the 8th day of October, 1892, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city, this third day of November, 1893.

MICHAEL F. BLAKE,
Clerk Common Council.

[SEAL.]

STATE OF NEW YORK,
City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original consent of the common council of the city of New York to the construction of certain street railroad branches, &c., on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Filed Nov. 3, 1893.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 20th day of April, 1894.

HENRY D. PURROY,
Clerk.

[SEAL.]

Houston, West Street and Pavonia Ferry R. R. and Chambers and Grand Street Ferry R. R.

Consent of common council to connection between roads of Houston, West Street and Pavonia Ferry Railroad Company and Chambers Street and Grand Street Ferry Railroad Company by route along Pitt and Gouverneur streets, in New York city, under section 93, railroad law.

To the honorable the common council of the city of New York:

The petition of the Houston, West Street and Pavonia Ferry Railroad Company respectfully shows:

First. That your petitioner is, and for many years has been, a street surface railroad corporation, owning, operating and using a street surface railroad through, upon and along certain streets and avenues in the city of New York, and among other streets and avenues from Stanton street through, upon and along Pitt street with a single track to Houston street; thence from Houston street through, upon and along Avenue C with a single track to Third street; thence with a double track through, upon and along Avenue C to Seventeenth street; thence through, upon and along various other streets and avenues to the Grand Central depot in the city of New York.

Second. That the Chambers Street and Grand Street Ferry Railroad Company formerly owned and operated a street surface railroad through, upon and along certain streets and avenues in the city of New York, and among other streets and avenues, from the Grand street ferry on the East river through, upon and along East street; thence through, upon and along Cherry street; thence through, upon and along Jackson street to Madison street; thence through, upon and along Madison street with a double track to New Chambers street; thence through, upon and along New Chambers street to Park row; thence through, upon and along various other streets and avenues to Pavonia ferry on the North river; thence through, upon

and along various other streets and avenues to Roosevelt ferry on the East river.

Third. That heretofore, pursuant to statute, the said The Chambers Street and Grand Street Ferry Railroad Company was merged with your petitioner, and your petitioner now owns, operates and uses the railroad and railroad routes formerly owned by the said The Chambers Street and Grand Street Ferry Railroad Company.

Fourth. That your petitioner desires to unite the said two street surface railroad routes at the intersection of Pitt street and Delancey street, said point of union being not over one-half mile from such respective lines or routes; the connection to be made by the construction, maintenance and operation of an extension or branch of your petitioner's said railroad, commencing at the intersection of Third street and Avenue C, connecting there by suitable curves and appliances with your petitioner's said road, and running thence with an additional single track through, upon and along Avenue C to and across Houston street to Pitt street, there to connect by suitable curves and appliances with the existing single track of your petitioner's road in Pitt street, and running thence through, upon and along Pitt street over the said single track in said street to Stanton street; thence (with suitable connections and curves at Stanton street) upon and across Stanton street with a single track; thence through, upon and along Pitt street to said point of union; and by the construction, maintenance and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Gouverneur street and Madison street, connecting there by suitable curves and appliances with the said road formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence, with a single track, through, upon and along Gouverneur street to and across Grand street; thence with a single track through, upon and along Pitt street to said point of union; such connection to be operated by any motive power which is or may at any time lawfully be used on either of the routes connected thereby.

Fifth. And by the construction of such connection your petitioner will be able and hereby offers, consents, and agrees to establish and maintain (the requisite consent of property-owners, or the lawful substitute therefor, having been first obtained) a new continuous route for public travel for one fare over the line of your petitioner, running south from the Grand Central depot, and over the line formerly of the Chambers Street and Grand Street Ferry Railroad Company, running west on the east side of the city between the Grand Central depot and the neighborhood of the Brooklyn bridge, post-office, and the public buildings in the city at Broadway and Chambers street and the terminus of said Chambers Street and Grand Street Ferry Railroad Company at Pavonia ferry on the North river.

Sixth. That said connection cannot be operated as an independent railroad conveniently to the public, and it is manifestly to the public advantage that the line shall be operated as a continuous line or route with said existing railroads.

Wherefore, your petitioner prays for the consent of the local authorities of the city of New York to the construction and operation by your petitioner of said connection and to the establishment, maintenance and operation by your petitioner of said new continuous route for public travel.

THE HOUSTON, WEST STREET AND PAVONIA FERRY RAILROAD COMPANY,
By JOHN D. CRIMMINS.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

MICHAEL F. BLAKE,
Clerk Common Council.

Whereas, said application contemplates the connection and union of two street surface railroads at a point not over one-half mile distant from its line of route as it now exists, and to establish, by the construction of such connection, a new route for public travel; and

Whereas, said corporation making such application did therein and does hereby consent to operate such new route, when said connection and union is made, as a part of a continuous route for one fare, either by continuous ride or transfer tickets; and

Whereas, the said common council caused public notice of such application and of the time and place when the same would be first considered to be given, by a notice thereof published daily for at least fourteen days prior to a hearing in two daily newspapers of the city of New York, to wit, in the "Sun" and "News," which papers were lawfully designated for that purpose by his honor, the mayor of said city; and

Whereas, on the 28th day of September, 1892, at 11 o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in said notice, a meeting of the common council of said city was held and said application was first considered by said common council; and

Whereas, it appears to the local authorities, upon a hearing and upon such application, as provided by law, that such connection and new route cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same be operated as a continuous line or route with the existing railroads of the applicant for one fare, either by continuous ride or transfer tickets, it is

Resolved, in pursuance of law, That the consent of the common council of the city of New York be and is hereby given to said company to construct, maintain, use and operate upon the streets and avenues in said application described, upon the conditions hereinafter named, and not otherwise, the extensions and branches aforesaid, as street railroads, upon the express condition that the corporation making such connections and extensions or branches shall pay into the treasury of said city the annual percentages provided for extensions or branches in the laws as they now exist; and be it further

Resolved, That the consent of said common council to said petition is hereby given on the further express condition that said applicant will do and perform all that the law requires in such cases and shall be subject to all the limitations thereof.

ANDREW A. NOONAN,
JABOB C. WUND,
WILLIAM H. MURPHY,
HORATIO S. HARRIS,
HARRY C. HART,
Committee on Railroads.

Adopted by the board of aldermen Sept. 29th, 1892.
Approved by the mayor, October 8th, 1892.
A true copy.

MICHAEL F. BLAKE,
Clerk Common Council.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York, on the 29th day of September, 1892, fifteen members of such board voting in favor of said resolution and five members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me after it had been approved by the mayor of the city of New York, on the eighth day of October, 1892, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city this 21st day of September, 1893.

MICHAEL F. BLAKE,
[SEAL.] Clerk Common Council.

STATE OF NEW YORK,
City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original petition and resolution, in the matter of the application of the Houston, West Street and Pavonia Ferry R. R. Co., filed Sept. 21st, 1893, on file in my office, and that the same are correct transcripts therefrom, and the whole of such originals.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 31st day of October, 1893.

HENRY D. PURROY,
[SEAL.] Clerk.

(NOTE.)—The consents of the abutting property owners were filed in the office of the clerk of the county of New York, Feb. 2, 1894.

HOUSTON, WEST STREET AND PAVONIA FERRY R. R. AND CHAMBERS STREET AND GRAND STREET R. R.

Consent of common council to connection between roads of Houston, West Street and Pavonia Ferry Railroad Company and Chambers Street and Grand Street Ferry Railroad Company by route along Ridge and Montgomery streets under section 93, railroad law.

To the honorable the common council of the city of New York:

The petition of the Houston, West Street and Pavonia Ferry Railroad Company respectively shows:

First. That your petitioner is and for many years has been a street surface railroad corporation owning, operating and using a street surface railroad through, upon and along certain streets and avenues in the city of New York, and among other streets and avenues from Houston street through, upon and along Avenue C with a single track to Third street; thence with a double track through, upon and along Avenue C to Seventeenth street; thence

through, upon and along various other streets and avenues to the Grand Central depot in the city of New York.

Second. That the Chambers Street and Grand Street Ferry Railroad Company formerly owned and operated a street surface railroad through, upon and along certain streets and avenues in the city of New York, and among other streets and avenues, from Grand Street ferry on the East river, through, upon and along East street; thence through, upon and along Cherry street; thence through, upon and along Jackson street to Madison street; thence through, upon and along Madison street with a double track to New Chambers street; thence through, upon and along New Chambers street to Park row; thence through, upon and along various other streets and avenues to Pavonia ferry, on the North river; thence through, upon and along various other streets and avenues to the Roosevelt Street ferry, on the East river.

Third. That heretofore, pursuant to statute, the said The Chambers Street and Grand Street Ferry Railroad Company was merged with your petitioner, and your petitioner now owns, operates and uses the railroad and railroad routes formerly owned by the said The Chambers Street and Grand Street Ferry Railroad Company.

Fourth. That your petitioner desires to unite said two street surface railroad routes at the intersection of Ridge street and Delancy street, said point of union being not over one half mile from said respective lines or routes, the connection to be made by the construction, maintenance and operation of an extension or branch of your petitioner's said railroad, commencing at the intersection of Houston street and Avenue C in the city of New York, connecting there by suitable curves and appliances with the road of your petitioner, running thence through, upon and along Houston street over the single track in said street of the road of the Forty-second Street and Grand Street Ferry Railroad Company to Ridge street; thence (with suitable curves and appliances at or near Ridge street) through, upon and along Ridge street with a single track to the

said point of union, and by the construction, maintenance, and operation of an extension or branch of the said railroad formerly of the Chambers Street and Grand Street Ferry Railroad Company, commencing at the intersection of Montgomery street and Madison street, connecting there by suitable curves and appliances with the said road, formerly of the Chambers Street and Grand Street Ferry Railroad Company, running thence with a single track through, upon and along Montgomery street to Division street, thence through, upon and across Division street to Ridge street; thence through, upon and along Ridge street with a single track to the said point of union, such connection to be operated by any motive power which is or may at any time lawfully be used on either of the routes connected thereby.

Fifth. And by the construction of such connection your petitioner will be able and thereby offers, consents and agrees to establish and maintain (the requisite consents of property owners or the lawful substitute therefor having been first obtained) a new continuous route for public travel for one fare over the line of your petitioner running north of Houston street and over the line formerly of the Chambers Street and Grand Street Ferry Railroad Company on the east side of the city between the Grand Central depot and the neighborhood of the Brooklyn bridge, post office and the public buildings in the city at Broadway and Chambers street, and the terminus of said Chambers Street and Grand Street Ferry railroad at Pavonia ferry on the North river.

Sixth. That said connection cannot be operated as an independent railroad conveniently to the public, but it is manifestly to the public advantage that the same shall be operated as a continuous line or route with said existing railroads.

Wherefore, your petitioner prays for the consent of the local authorities of the city of New York to the construction and operation by your petitioner of said connection and to the establishment, maintenance and operation by

your petitioner of said new continuous route for public travel.

THE HOUSTON, WEST STREET AND
PAVONIA FERRY R. R. CO.,
By JOHN D. CRIMMINS,
President.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

MICHAEL F. BLAKE,
Clerk Common Council.

Whereas, said application contemplated the connection and union of two street surface railroads at a point not over one-half mile distant from its line of route as it now exists, and to establish by the construction of such connection a new route for public travel; and

Whereas, said corporation making such application did therein and does hereby consent to operate such new route when said connection and union is made as a part of a continuous route for one fare, either by continuous ride or transfer tickets; and

Whereas, the said common council caused public notice of such application, and of the time and place when the same would be first considered, to be given by a notice thereof published daily for at least fourteen days prior to a hearing, in two daily newspapers of the city of New York, to wit, in the "Sun" and "News," which papers were lawfully designated for that purpose by his honor the mayor of said city; and

Whereas, on the twenty-eighth day of September, 1892, at eleven o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in said notice, a meeting of the common council of said city was held and said application was first considered by said common council; and

Whereas, it appeared to the local authorities, upon a hearing had upon such application as provided by law, that such connection and new route cannot be operated

as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same be operated as a continuous line or route with the existing railroads of the applicant for one fare, either by continuous ride or transfer tickets, it is

Resolved, in pursuance of law, That the consent of the common council of the city of New York be and is hereby given to said company to construct, maintain, use and operate upon the streets and avenues in said application described, upon the conditions hereinafter named, and not otherwise, the extension and branches aforesaid, as street railroads upon the express condition that the corporation making such connections and extensions or branches shall pay into the treasury of said city the annual percentage, provided for extensions or branches in the laws as they now exist; and be it further

Resolved, That the consent of said common council to said petition is hereby given on the further express condition that said applicant will do and perform all that the law requires in such cases and shall be subject to all the limitations thereof.

ANDREW A. NOONAN,
JACOB C. WUND,
WILLIAM H. MURPHY,
HORATIO S. HARRIS,
HARRY C. HART,
Committee on Roads.

Adopted by the board of aldermen, September 29th, 1892.

Approved by the mayor, October 8th, 1892.

(A true copy.)

MICHAEL F. BLAKE,
Clerk Common Council.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York, on the 29th day of September, 1892, sixteen members of such board voting

in favor of said resolution and four members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me after it had been approved by the mayor of the city of New York, on the eighth day of October, 1892, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city, this 21st day of September, 1893.

MICHAEL F. BLAKE,
Clerk Common Council.

[SEAL.]

METROPOLITAN CROSS TOWN R. R.

Resolution of the common council of the city of New York consenting to the operation of the Metropolitan Cross-town Railroad Company, approved Dec. 31, 1889.

Resolved, That the consent of the common council of the city of New York be and is hereby given to the Metropolitan Cross-town Railway Company to the construction, maintenance, use and operation, upon the conditions hereinafter named, and not otherwise, of a street railroad upon and through the streets and avenues in said city, mentioned and described in the petition of said company, as follows, to wit: Commencing upon East street, at or near the Grand Street ferry, and running thence through, upon and along East street, with a double track to Delancey slip or street; thence through, upon and along Delancey street, with a double track, to the Bowery; thence through, upon and across the Bowery to Spring street; thence through, upon and along Spring street, with a double track, to South Fifth avenue; thence through, upon and along South Fifth avenue, with a double track, to Fourth street; thence through, upon and along Fourth street, with double track, to MacDougal street; thence through, upon and along MacDougal street, with a double track, to Waverly place; thence through, upon and along Waverly place to Christopher street, with a double track; thence through and along Waverly place from Christopher

to Bank street with a single track; thence through, upon and along Bank street, with a double track, to Greenwich avenue; thence through, upon and along Greenwich avenue, with a double track, to Thirteenth and Horatio street; thence through, upon and along Thirteenth street and Horatio street, with a single track, to Eighth avenue; thence through, upon and across Eighth avenue to Thirteenth street; thence through, upon and along Thirteenth street, with a double track, to Thirteenth avenue; thence through, upon and along Thirteenth avenue, with a double track, to Fourteenth street, together with the necessary connections, turnouts, sidings, switches, turn-tables and convenient stands for the working and accommodation of said railroad; and be it further

Resolved, That the conditions upon which, and not otherwise, the said consent is hereby given, are as follows, to wit:

First. That the provisions of chapter 252 of the Laws of 1884, pertinent thereto, shall be complied with.

Second. That the right, franchise and privilege of using the said streets and avenues to construct, maintain, use and operate a street surface railroad upon the said streets and avenues subject to all the provisions of chapter 252 of the Laws of 1884, and of chapter 642 of the Laws of 1886, shall be sold at public auction to the bidder, which shall be an incorporated railroad or railway company organized to construct, maintain and operate a street railroad in the city of New York, for which such consent is given, and which will agree to give the largest percentage per annum of its gross receipts, with adequate security, by a bond or undertaking in writing, and under seal, in such form, condition, amount and sureties as shall be required and approved by the comptroller of the said city, for the fulfillment of the said agreement, and for the commencement and completion of such road according to the plan or plans, and on the route or routes fixed for its construction, within the time or times designated and prescribed therefor by the provisions of chapter 642 of the Laws of 1886.

Third. That in the construction of the said railroad and its equipment the materials and work employed shall be of the best quality and character, and the said railroad shall be constructed with side-bearing rail, having the outer edge of bearing flush with pavement, with inside drop not exceeding one inch in depth; and that the cars thereon shall be run as frequently as the convenience of the public may require.

Fourth. That the bidder to which the aforesaid sale shall be made, and any person or corporation using the tracks or any part of the tracks constructed or laid under or in pursuance of this consent, shall comply with all reasonable ordinances or regulations which the local authorities having charge of the aforesaid streets and avenues, or any of them, shall make as to the rate of speed, mode of use of tracks, and removal of ice and snow, and with any and all provisions of law applicable to any street surface railroad company organized under chapter 252 of the Laws of 1884, and shall not charge any passenger more than five cents from or to any point on the route hereinabove described, nor from any point on said route o any route connecting with the route hereinabove described to any point on said route, or any route connecting with the route hereinabove described, but shall give transfer tickets to a passenger when necessary to secure, and which shall secure, to him one continuous ride between such points for the single fare of five cents.

And the said bidder, as to the whole route hereinabove described, shall be absolutely and unqualifiedly bound, and any person or company using or operating a railroad upon the tracks, or any part of the tracks, constructed upon the said route under or by virtue of the consent hereby given or the sale had in pursuance thereof, as to the tracks so used by it or him, shall be jointly and severally bound with the said bidder absolutely and unqualifiedly to repair and keep in permanent repair the portion of said streets and avenues upon which the tracks shall be so constructed, between the tracks, the rails, the rails

of the tracks, and a space two feet in width outside of and adjoining the outside rails of the track or tracks, so long as such tracks so constructed shall continue to be used, and this obligation in respect to the repairing of the streets shall not be dependent upon the requirements of the local authorities, but is hereby made an absolute and unqualified obligation; and they shall in like manner and to a like extent be bound to and shall remove the snow from the same parts of the streets or avenue immediately after it shall have fallen, or as soon as possible thereafter, and not merely to clear the tracks and the space between them by removing the snow to the space intervening between the tracks and the curbstones, but to remove the snow entirely from that portion of the streets or avenues made use of for the construction and operation of the railroad, so far as such snow may have fallen or ice may have been formed upon the said tracks, or upon the space between them, or the designated two feet of space upon each side of the outside of said tracks, the snow or ice so removed to be taken from the street and deposited at the nearest and most convenient place used by the city authorities for the deposit of snow removed by themselves.

Fifth. That the railroad to the construction or operation of which this consent is given shall be operated only by animal or horse power, and that no cars shall be operated by any person or company over the route hereinabove described, and under or by virtue of this consent, by any other than animal or horse power, unless the right so to do shall be acquired as provided by section 12 of chapter 252 of the Laws of 1884.

Sixth. That any person or company who shall use or operate a railroad upon the tracks, or any part of the tracks, constructed upon the route hereinabove described, under or by virtue of the consent hereby given, or the sale had in pursuance thereof, shall be subject to the same conditions, liabilities, obligations, duties and payments in respect to such use or operation by him or it, of or upon

such tracks, as the bidder to whom the sale shall be made under this consent would be subject were such use or operation made by such bidder, and in computing any percentage upon the gross receipts that may thereby become payable, the amount thereof shall be computed upon a fare of five cents as having been received as part of the gross receipts from every passenger who shall ride upon any part of the route hereinabove described, and irrespective of the fact whether such passenger enters or leaves the car at any point upon the said route, and the bidder to whom such sales shall be made shall be jointly and severally liable with any such person or company for any default in any of such conditions, liabilities, obligations, duties and payments.

Seventh. That the percentage upon gross receipts payable under the bid at such sale, shall be made annually on the first day of November for the year ending on the next preceding thirtieth day of September.

Eighth. That the said Metropolitan Cross-town Railway Company shall provide for the expense of publication of the aforesaid notice of sale before the said notice shall be published, and the company which at the said sale shall be the highest bidder at the time and place of sale reimburse the said Metropolitan Cross-town Railway Company for all expenses for printing and publishing necessarily incurred by it upon the application and sale herein, under the provisions of said chapter 252 of the Laws of 1884, and of said chapter 642 of the Laws of 1886.

Ninth. This consent is given and the said sale shall be made upon the express understanding that the conditions herein stated do not relieve the said bidder, or any person or company operating a road upon any of the tracks constructed under this consent, from any conditions, obligations, liabilities, payments or duties to which they might have been liable in the absence of such conditions.

Tenth. That if the bidder shall not furnish satisfactory security, the said comptroller may cancel the bid and sell this consent and the license in the same manner as is provided by chapter 642 of the Laws of 1886.

Eleventh. That the said bidder shall, within thirty days after the sale at public auction, execute under its corporate seal, to be attested by its president or treasurer, and by virtue of a resolution of its board of directors, an instrument in writing, which shall be delivered to the comptroller of the city of New York, and which shall contain and express the acceptance by the said bidder of this consent of the common council for the construction, maintenance, use and operation of the proposed railroad upon the streets and avenues above mentioned upon the terms and conditions upon which this consent is granted, and binding the said company to abide by, comply with, faithfully perform and keep the said terms and conditions; and be it further

Resolved, That the sale at public auction of the right, franchise and privilege mentioned above shall be attended and conducted by the comptroller of the city of New York, and shall be held at a place in the city of New York to be designated by the said comptroller, and on the earliest practicable day to be designated by the said comptroller, or at such time to which the same may be adjourned from the day specified in the notice so published, not exceeding twice, for a period not exceeding four weeks in the aggregate, and only after notice of the time, place and terms thereof, and of the route or routes to be sold, and of the conditions upon which this consent is given, shall have been published by the said comptroller three times a week for at least three weeks, in two daily newspapers in said city, to be designated by his honor the mayor of said city (and if the bidder shall not furnish satisfactory security, the said comptroller may cancel the bid and sell this consent and the license in the same manner as is provided by chapter 642 of the Laws of 1886).

Adopted by the board of aldermen, December 24th, 1889.

Approved by the mayor, December 31st, 1889.

F. J. TWOMEY,
Clerk Common Council.

Certificate of Sale of Franchise.

Comptroller's office, city of New York, 280 Broadway, N. Y.

This is to certify that on the 24th day of February, 1890, the Metropolitan Cross-town Railway Company franchise was sold at public auction at 6 per cent. of its gross receipts for the first five years and 8 per cent. of its gross receipts thereafter.

The said company paid $5,000 as security to furnish bonds.

Dated New York, 1894.

BUREAU OF CITY REVENUE.
HENRY MAURER, *Dept. Col.*

METROPOLITAN CROSS TOWN R. R.

Consent of common council to connection between roads of Metropolitan Cross-town Railroad Company and Sixth Avenue Railroad Company by route along West Third street, in New York city, under section 94, railroad law.

In Common Council.

The petition of the Metropolitan Cross-town Railroad Company and the Sixth Avenue Railroad Company respectfully shows:

I. That your petitioners now are and for a number of years past have been street surface railroad corporations, owning and operating street surface railroads and railroad routes through, upon and along certain streets and avenues in the city of New York.

II. That it is desired to unite the route of your petitioners at the intersection of West Third street and Sullivan street, in the city of New York, such point of union being not over one-half mile from the respective lines or routes of your petitioners, the connection to be made by the construction, maintenance and operation of an extension or branch of the railroad of the Metropolitan Cross-town Railway Company, commencing at the intersection of South Fifth avenue and West Third street,

connecting there by suitable curves and attachments with the road of the said The Metropolitan Cross-town Railway Company, and running thence westerly with double tracks through, upon and along West Third street to said point of union, and by the construction, maintenance and operation of an extension or branch of the railroad of the said The Sixth Avenue Railroad Company, commencing at the intersection of Sixth Avenue and West Third street, and running thence easterly with double tracks through, upon and along West Third street to said point of union, and the same to be operated by any motive power which is now or may at any time hereafter be lawfully used on either of the roads connected thereby.

III. That by the construction of such connection your petitioners will be able, and hereby offer, consent and agree (the requisite consents of property owners or the lawful substitute therefor having first been obtained) to unite their respective lines or routes and to establish and maintain a new continuous route for public travel for one fare.

IV. That such connection cannot be operated as an independent railroad conveniently to the public, but it is manifestly to the public advantage that the same should be operated as a continuous line or route with the existing railroads of your petitioners respectively.

Wherefore, your petitioners pray for the consent of the local authorities of the city of New York to the construction and operation of said connection, and to the establishment, maintenance and operation of said new continuous route for public travel.

Dated New York, July 5, 1892.

THE METROPOLITAN CROSS TOWN RAILWAY COMPANY,
BY P. A. B. WIDENER,
President.

THE SIXTH AVENUE RAILROAD COMPANY,
By FRANK CURTISS,
President.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

MICHAEL F. BLAKE,
Clerk Common Council.

And whereas said joint application contemplates the connection and union of two street surface railroads at a point not over one-half mile distant from their respective lines or routes as they now exist, and to establish by the construction of such new connection a new and continuous route for public travel; and

Whereas, said corporation making said application did therein and do hereby consent to operate said new route when such connection and union is made as a part of a continuous route for one fare, either by a continuous ride or by transfer tickets; and

Whereas, the said common council caused public notice of such application and of the time and place when the same will be first considered, to be given by a notice thereof published daily for at least fourteen days prior to a hearing, in two daily newspapers of the city of New York, to wit: the "Sun" and the "News," which papers were lawfully designated for that purpose by his honor the mayor of said city; and

Whereas, on the twenty eight day of September, 1892, at eleven o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in said notice, a meeting of the common council of said city was held, and said application was first considered by said common council; and

Whereas, it appears to the local authorities, upon a hearing duly had of said application, as provided by law, that said connection and new route cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public's advantage that the same be operated as a continuous line or route with the existing railroads of the applicants for one fare with either, by continuous ride or transfer tickets; it is

Resolved, in pursuance of law, That the consent of the common council of the city of New York be and is hereby given to said companies to construct, maintain, use and operate upon the streets and avenues in said application described, upon conditions hereinafter named and not otherwise, the extensions and branches aforesaid as street railroads, upon the express condition that the corporation or corporations making such connection, extensions or branches, shall pay into the treasury of said city annual percentages provided for extensions or branches in the laws as they now exist; be it further

Resolved, That the consent of the common council to said petition is hereby given on the further express condition that said applicants, each of them, will do and perform all that the law requires in such cases, and shall be subject to all the limitations thereof.

Adopted by the board of aldermen, September 29th, 1892, a majority of all the members elected voting in favor thereof.

Approved by the mayor, October 29th, 1892.

MICHAEL F. BLAKE,
Clerk of the Common Council.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York, on the 29th day of September, 1892, fifteen members of such board voting in favor of said resolution and four members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me, after it had been approved by the mayor of the city of New York, on the eighth day of October, 1892, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city, this 25th day of September, 1893.

MICHAEL F. BLAKE,
[SEAL.] Clerk Common Council.

STATE OF NEW YORK, City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original resolution, Metropolitan Cross-town and Sixth Avenue Railroad Company, West Third Street and South Fifth Avenue connections, &c., filed September 26th, 1893, on file in my office, and that the same is a correct transcript therefrom, and the whole of such original.

In witness whereof, I have hereunto subscribed my name, and affixed my official seal, the 15th day of November, 1893.

HENRY D. PURROY,
Clerk.

[SEAL.]

(NOTE.)—The consents of the abutting property owners were filed in the office of the clerk of the county of New York on ————————, 1894.

METROPOLITAN CROSS-TOWN R. R.

Consent of common council to extension of the road of Metropolitan Cross-town Railway Company along Broome, Sullivan and Watts streets, under section 93, railroad law.

In common council.

Your petitioner, The Metropolitan Cross-town Railway Company, respectfully shows:

First. That it is and for a number of years past has been a street surface railroad corporation, existing under and by virtue of the laws of the State of New York, and as such is the owner and operator of a street surface railroad through, upon and along certain streets and avenues in the city of New York.

Second. That it desires to unite its route, when extended, from Spring street on South Fifth avenue to Canal street and West Broadway, as heretofore applied for, from a connection therewith on South Fifth avenue, at the intersection of Broome street, by suitable curves and appliances;

thence with double tracks through, upon and along Broome street to Sullivan street; thence through, upon and along Sullivan street with double tracks to Watts street; thence through, upon and along Watts street with double tracks to a union with route and road of the Houston, West Street and Pavonia Ferry Railroad Company, now on West street, and to connect also with Desbrosses Street ferry, said branch over said streets to said union of the routes or road of said Metropolitan Railway Company when built on South Fifth avenue to Broome street as aforesaid.

Third. That the construction of this branch of your petitioner's said road when built will be operated as a part of a continuous line with the road of your petitioner, and will make a continuous route for public travel from all points on petitioner's present proposed line to the point of union with said The Houston, West Street and Pavonia Ferry Railroad Company's said road or route to Desbrosses Street ferry.

Fourth. That said branch of said union cannot be operated as an independent railroad conveniently to the public, but it is manifestly to the public advantage that the same should be operated as a continuous line or route with the existing and proposed routes of your petitioner; wherefore your petitioner respectfully applies and prays for the consent of the local authorities of the city of New York to the construction and operation of said branch and the establishment of said union and maintenance and operation thereof.

New York, September 13, 1892.

THE METROPOLITAN CROSS-TOWN RAILWAY COMPANY,
By P. A. B. WIDENER,
President.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

MICHAEL F. BLAKE,
Clerk Common Council.

And whereas, said application contemplates the connection and union of two street surface railroads at a point not over one-half mile distant from the line of petitioner's road as it now exists, and the Houston, West Street and Pavonia Ferry railroad as it now exists, on West street, thereby creating a new route to Desbrosses Street ferry over the line of petitioner, as extended, and to establish by the construction of such connection and union a new route for public travel; and

Whereas, said corporation making said application did therein and does hereby consent to operate such new route when said connection and union is made as a part of a continuous route for one fare, either by continuous ride or transfer tickets; and

Whereas, the said common council caused public notice of such application and of the time and place when the same would be first considered, to be given by a notice thereof, published daily for at least fourteen days prior to a hearing in two daily newspapers of the city of New York, to wit, in the "Sun" and "News," which papers were lawfully designated for that purpose by his honor, the mayor of said city; and

Whereas, on the 28th day of September, 1892, at 11 o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in the said notice, a meeting of the common council of said city was held and said application was first considered by the said common council; and

Whereas, it appeared to the local authorities upon a hearing had upon such application as provided by law, that such connection and new route cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same be operated as a continuous line or route with the existing railroads of the applicant for one fare, either by continuous ride or transfer tickets; it is

Resolved, in pursuance of law, That the consent of the common council of the city of New York be and is hereby given to said company to construct, maintain, use and

operate upon the streets and avenues in the said application described, upon the conditions hereafter named, and not otherwise, the extensions and branches aforesaid, as street railroads, upon the express condition that the corporation making such connections and extensions or branches shall pay into the treasury of the said city the annual percentages provided for the extensions or branches in the laws as they now exist; and be it further

Resolved, That the consent of the said common council to said petition is hereby given, on further express condition that the said applicant will do and perform all that the law requires in such cases, and shall be subject to all the limitations thereof.

Adopted by the board of aldermen, Sept. 29th, 1892 a majority of all the members elected voting in favor thereof.

Approved by the mayor, Oct. 8th, 1892.

MICHAEL F. BLAKE,
Clerk of the Common Council.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York, on the 29th day of September, 1892, fifteen members of such board voting in favor of said resolution and three members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me, after it had been approved by the mayor of the city of New York, on the eighth day of October, 1894, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city, this 25th day of September, 1893.

[L. S.] MICHAEL F. BLAKE,
Clerk Common Council.

STATE OF NEW YORK, City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original resolution Metropolitan Cross-town R'y Co., on Broome, Sullivan and Watts streets, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Endorsed: Filed Sept. 26, '98.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 17th day of July 1894.

HENRY D. PURROY,
Clerk.

[SEAL.]

(Note.)—The consents of the abutting owners of property were filed in the office of the clerk of the county of New York on ---- -- —— 1894.

METROPOLITAN CROSS-TOWN R. R.

Consent of common council to connection between roads of Broadway and Seventh Avenue Railroad Company, and Metropolitan Cross-town Railway Company, by route along South Fifth avenue, under section 93-railroad law.

In common council.

The petition of the Broadway and Seventh Avenue Railroad Company and of the Metropolitan Cross-town Railway Company respectfully shows:

I. That your petitioners now are and for a number of years past have been street surface railroad corporations owning and operating street surface railroads through, upon and along certain streets and avenues in the city of New York.

II. That it is desired to unite the routes of your petitioners at the intersection of South Fifth avenue and Broome street, in the city of New York, said point of union being not over one-half mile from the respective

lines or routes of your petitioners, the connection to be made by the construction, maintenance and operation of an extension or branch of the road and route of the Broadway and Seventh Avenue Railroad Company, commencing near the intersection of the southerly side of Canal street with West Broadway, connecting there by suitable curves and attachments with the existing route of the Broadway and Seventh Avenue Railroad Company in West Broadway and Canal street, and running thence northerly with double tracks upon and across Canal street to South Fifth avenue, and (connecting by suitable curves and appliances with the single track of the road of the said Broadway and Seventh Avenue Railroad Company on the northerly side of Canal street); thence running northerly through, upon and along South Fifth avenue with double tracks to Broome street to said point of union; and by the construction, maintenance and operation of an extension or branch of the road and route of the Metropolitan Cross-town Railway Company, commencing at South Fifth avenue and Spring street, connecting there by suitable curves and appliances with said existing road, and running thence southerly with double tracks through, upon and along South Fifth avenue to said point of union; said connection to be operated by any motive power which is now, or may at any time hereafter, lawfully be used on either of the roads connected thereby.

III. That by the construction of such connection your petitioners will be able and hereby offer, consent and agree (the requisite consents of property-owners or the lawful substitute therefor having been first obtained) to unite their respective lines or routes and to establish and maintain a new continuous route for public travel for one fare.

IV. That such connection cannot be operated as an independent railroad conveniently to the public, but it is manifestly to the public advantage that the same should be operated as a continuous line or route with the existing railroads of your petitioners respectively.

Wherefore your petitioners pray for the consent of the

local authorities of the city of New York to the construction and operation of said connection and to the establishment, maintenance and operation of said new continuous route for public travel.

Dated New York, July 5th, 1892.

THE BROADWAY AND SEVENTH AVENUE RAILROAD COMPANY,
By D. B. HASBROUCK, Vice-President,
THE METROPOLITAN CROSS-TOWN RAILWAY COMPANY,
By P. A. B. WIDENER, President.

And whereas, said joint application contemplates the connection and union of two street surface railroads at a point not over one-half mile distant from their respective lines or routes as they now exist, and to establish by the construction of such new connection a new and continuous route for public travel; and

Whereas, said corporations making said applications did therein, and do hereby consent to operate said new route when such connections and union is made as a part of a continuous route for one fare either by a continuous ride or by transfer tickets; and

Whereas, the said common council caused public notice of such application, and of the time and place when the same will be first considered, to be given by a notice thereof, published daily for at least fourteen days prior to a hearing, in two daily newspapers of the city of New York, to wit, the "Sun" and the "News," which papers were lawfully designated for that purpose by his honor, the mayor of said city; and

Whereas, on the twenty-eighth day of September, 1892, at eleven o'clock a. m., at the chamber of the board of aldermen of said city, that being the time and place designated in said notice, a meeting of the common council of said city was held, and said application was first considered by said common council; and

Whereas, it appears to the local authorities, upon a hearing duly had of said application as provided by law,

that said connection and new route cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public's advantage that the same be operated as a continuous line or route with the existing railroads of the applicants for one fare with either, by continuous ride or transfer tickets; it is

Resolved, in pursuance of law, That the consent of the common council of the city of New York be, and is hereby given to said companies to construct, maintain, use and operate upon the streets and avenues in said application described, upon conditions hereinafter named, and not otherwise, the extensions and branches aforesaid as street railroads, upon the express condition that the corporation or corporations making such connections, extensions or branches shall pay into the treasury of said city annual percentages provided for extensions or branches in the laws as they now exist; be it further

Resolved, That the consent of the common council to said petition is hereby given on the further express condition that said applicants, each of them, will do and perform all that the law requires in such cases, and shall be subject to all the limitations thereof.

Adopted by the board of aldermen September 29th, 1892, a majority of all the members elected voting in favor thereof.

Approved by the mayor October 8th, 1892.

MICHAEL F. BLAKE,
Clerk of the Common Council.

I, MICHAEL F. BLAKE, clerk of the common council of the city of New York, do hereby certify that the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York on the 29th day of September, 1892, fifteen members of such board voting in favor of said resolution and three members voting in opposition thereto, being a vote by a majority of all the members elected to the said board. That the said resolution was duly returned to me, after it had been approved by the mayor of the city of New York, on the eighth day

of October, 1892, and thereby took effect as provided for in section 75 of chap. 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city this 25th day of September, 1893.

[SEAL.] MICHAEL F. BLAKE,
Clerk Common Council.

STATE OF NEW YORK,
City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original resolution, Broadway and Seventh Avenue R. R. Co. across Canal street and up South Fifth avenue to Broome street, on file in my office, filed September, 1893, and that the same is a correct transcript therefrom and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 18th day of April, 1894.

[SEAL.] HENRY D. PURROY,
Clerk.

COLUMBUS AND NINTH AVENUE R. R.

Consent of common council to the extension of the road of the Ninth Avenue Railroad Company upon Columbus avenue to One hundred and tenth street, and upon One hundred and sixth street between Columbus and Amsterdam avenues.

Whereas, the Ninth Avenue Railroad Company, pursuant to the railroad law, heretofore made its application in writing to the common council of the city of New York for its consent and permission to be granted to said Ninth Avenue Railroad Company, its successors, lessees and assigns, to extend the existing railroad tracks of the said company, and that the said company may be allowed to build, construct, maintain and operate branches of its rail-

road in the streets and avenues in the city of New York hereinafter mentioned; and

Whereas, due notice has been given, as required by the railroad law, that said application would be considered at the chamber of this board on the twenty-eighth day of September, 1892, at 11 o'clock a. m.; and

Whereas, at the time and place so designated such application was considered, and all persons desirous of being heard in reference thereto were heard, and no opposition being made; now, therefore, pursuant to law, it is

Resolved, first. That the consent of the common council of the city of New York be and is hereby given the said The Ninth Avenue Railroad Company, its successors, lessees and assigns, may extend the existing railroad tracks of said company, and may construct, maintain and operate an extension or branches of the railroad of said company in the city of New York as follows, that is to say: Commencing in Columbus avenue, at or near Sixty-fourth street, there to connect with the existing double track of said company in said avenue; thence running across the surface of the boulevard and upon, along and over the surface of Columbus avenue (formerly named Ninth avenue), with double tracks to One hundred and tenth street, also from Columbus avenue with double tracks through and along One hundred and sixth street to Amsterdam avenue, to connect with the existing double tracks in Amsterdam avenue (formerly named Tenth avenue), now owned by the said The Ninth Avenue Railroad Company, together with all necessary connections, turn-outs and switches necessary for the proper working and accommodation of the cars to be run over such extension or branches in connection with the present existing railroad route of said The Ninth Avenue Railroad Company, its lessees or assigns.

Resolved, second. That the conditions upon which, and not otherwise, the said consent is hereby given shall be and are as follows: That the right, privilege and franchise of using the said streets and avenues to construct, maintain, use and operate a street surface railroad upon

the said streets and avenues as a branch or extension of the road of the applicant shall be sold at public auction to the bidder which shall be a duly incorporated railroad corporation of this State, organized to construct, maintain and operate a street railroad in the city of New York, for which this consent may be given, and which will agree to give the largest percentage per annum of the gross receipts of the said branch or extension, as defined by section 93 of the railroad laws of this State, with adequate security by bond or undertaking in writing or under seal, in such form and amount and with such conditions and sureties as shall be required and approved by the comptroller of said city, for the fulfillment of the said agreement and for the commencement and completion of such road, according to the plan or plans and on the route fixed for its construction, within the time designated and prescribed therefor by the laws now prevailing and applicable thereto.

Resolved, third. That the bidder to which the aforesaid sale shall be made shall construct and put in operation a double track railroad to be operated by power other than horse or locomotive steam power, or the power known as the trolley system, or any motive power operated by means of electricity through an overhead wire upon said branch or extension, with all necessary equipment and fixtures in the way of machinery, power and power-houses as shall be necessary for the operation of a first class railroad, the materials and work to be of the best quality and character; the plans of street construction, quality and pattern of material therefor, number and location of sidings, connections with power-houses and other railroads, turnouts and turn-tables, to be subject to the approval of the commissioner of public works of said city.

And this consent is given upon the further and absolute condition that nothing therein shall be construed as a consent, grant or permission to use the motive power designated and known as the trolley system, and that no motive power operated by means of electricity through an overhead wire shall be used.

Resolved, fourth. That the cars shall be run upon such branch or extension as frequently as the convenience of the public may require. And if the right to construct or operate said branch or extension shall be purchased at said sale by the company applying for this consent, the same shall be operated as a part of the continuous line of the applicant, so as to enable any passenger, by transfer tickets or otherwise, to obtain the benefit of a continuous ride, for one fare, to or from any point on said branch or extension and any point on the lines of railroad of the company applying for this consent, whether the same be owned or leased by said company. And if the right to construct said branch or extension shall be purchased at said sale by any corporation other than the applicant for this consent, the said purchaser shall deliver and receive passengers at the point of junction with the road of the applicant, upon a division of earnings from such joint business in the proportion that the length of the extension or branch so sold shall bear to the entire length of road of the company applying for this consent, whether owned or leased, together with the mileage of such branch or extension.

This consent is further conditioned, that if the right to construct and operate said branch or extension shall be purchased by the company applying for this consent, the percentage to be paid upon gross receipts, on behalf of such branch or extension, shall be calculated on such portion of the gross receipts of the applicant as shall bear the same proportion to the whole amount thereof as the length of such extension or branch shall be to the entire length of its road, owned or leased. This consent is further conditioned, that no passenger shall be charged more than five cents for a continuous ride upon, from or to the above branch or extension under the conditions as to the connections herein in this section provided.

Resolved, fifth. As a further condition of this consent, that the successful bidder at said sale, to whom this consent for the construction and operation of such branch or extension shall be awarded, shall deposit at the time of

said sale with the comptroller of said city conducting the sale, to the order of the mayor, the sum of five hundred thousand dollars, which shall be deposited by said mayor in some trust company or national bank in the city of New York as a special deposit, subject to conditions, as follows:

Said money to be held as security that the said railroad, for the construction of which said consent is hereby given, shall be in good faith built and put in operation as contemplated by this consent within the time or times prescribed by the railroad law, unless the construction or operation of the said railroad shall be prevented by injunction or other hostile legal proceedings; and as expenditures upon said railroad for property, fixtures, machinery, street work, equipment or appurtenances shall progress said special deposit shall be subject to drafts of the corporation engaged in said work, upon certificate of the commissioner of public works that an amount equal to the amount drawn from time to time from said fund has been expended in good faith upon or for the purposes of said railroad, as herein in this section provided. And if, at the expiration of two years, from the time of said sale, said road shall not have been constructed and be in operation, the said fund then on deposit shall be forfeited to said city, unless the construction and operation of the said railroad shall have been prevented by injunction or hostile legal proceedings as aforesaid. And in case of failure on the part of any successful bidder at said sale to make such deposit at the time of said sale, a resale shall be immediately made upon the terms and conditions hereinafter provided.

Adopted by the board of aldermen October 10, 1892, three-fourths of all the members elected voting in favor thereof, having been first advertised as required by law.

Approved by the mayor October 18, 1892.

MICHAEL F. BLAKE,

[SEAL.] Clerk of the Common Council.

(NOTE.)—Consents of abutting property owners to above were filed in the office of the clerk of the county of New York, on Sept. 27, 1893.

Grant of the common council for extension in One hundred and ninth street and in Manhattan avenue.

Whereas, the Columbus and Ninth Avenue Railroad Company and the Metropolitan Street Railway Company have heretofore, and on or about the 4th day of June, 1894, made an application in writing to the common council of the city of New York for its consent and permission to be granted, as follows:

1. That its consent be granted to the Columbus and Ninth Avenue Railroad Company to extend its route and road, and to construct, maintain and operate a branch thereof, commencing at the intersection of Columbus avenue and One hundred and ninth street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence easterly with double tracks through, upon and along One hundred and ninth street, to Manhattan avenue; thence northerly, upon Manhattan avenue, with double tracks, to the southerly side of Cathedral parkway (formerly One hundred and tenth street), there to unite with an extension or branch of the Metropolitan Street Railway Company.

2. To the Metropolitan Street Railway Company, to extend its road and route, and to construct, maintain and operate a branch thereof, commencing at the intersection of Manhattan avenue and One hundred and sixteenth street and connecting there by suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through and along Manhattan avenue to the southerly side of Cathedral parkway (formerly One hundred and tenth street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company.

3. To the construction, maintenance and operation of the connection to be formed by the construction of the extensions or branches of the said companies, and to the operation of the same as a new and continuous route for public travel.

And whereas, the common council of the city of New York caused public notice of such application by said two railroad companies, of the time and place when the same would be considered, to be given by publication daily for at least fourteen days prior to the hearing in two of the daily newspapers of the city of New York, to wit, in the New York "Sun" and in the New York "Times," which papers were lawfully designated for that purpose by his honor, the mayor of said city; and

Whereas, after public notice given as aforesaid, and at a public meeting held at the chamber of the board of aldermen in the city hall, in the city of New York, in pursuance thereto, whereat all persons so desiring were given an opportunity to be heard, and were heard, such application has been duly considered; and

Whereas, it is apparent from the proofs and evidence submitted by the said two companies, that they desire to unite their two street surface railroad routes at a point on Manhattan avenue which is not over one-half mile from the respective lines or routes of the said two companies, and intend to establish by the construction of said connection a new route for public travel, and the said two corporations, petitioners, have consented to operate such connection as a part of a continuous route for one fare; and it further appearing that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with the existing railroads;

It is, therefore, resolved, that the consent of the common council of the city of New York be, and it hereby is given:

1. To the Columbus and Ninth Avenue Railroad Company, to extend its route and road, and to construct, maintain and operate a branch thereof, commencing at the intersection of Columbus avenue and One hundred and ninth street, and connecting there by suitable curves, switches and appliances with the road of the Columbus and Ninth Avenue Railroad Company, running thence

easterly with double tracks, through, upon and along One hundred and ninth street to Manhattan avenue; thence northerly upon Manhattan avenue, with double tracks, to the southerly side of Cathedral parkway (formerly One hundred and tenth street), there to unite with an extension or branch of the Metropolitan Street Railway Company, hereinafter designated.

2. To the Metropolitan Street Railway Company, to extend its road and route, and to construct, maintain and operate a branch thereof, commencing at the intersection of Manhattan avenue and One hundred and sixteenth street, and connecting thereby suitable curves, switches and appliances with the road of the Metropolitan Street Railway Company, running thence southerly, with double tracks, through, upon and along Manhattan avenue to the southerly side of Cathedral parkway (formerly One hundred and tenth street), there to unite with an extension or branch of the Columbus and Ninth Avenue Railroad Company hereinbefore designated.

3. To the construction, maintenance and operation of the railroad to be formed by the construction of the extensions or branches of the said companies, and to the operation of the same as a new continuous route for public travel with the respective railroads of the said companies.

4. That the said two companies and each of them be and they hereby are authorized to construct, maintain and operate such necessary connections, switches, sidings, turnouts, cross-overs and suitable stands as shall be necessary for the convenient working of the said connection, and for the accommodation of the cars to be run over the same.

Resolved further, That this consent is also given upon the condition that the corporations owning or using the railroads of the petitioners shall operate such connection as a part of a continuous route for one fare.

Resolved further, That this consent is also given upon the condition that such extensions or branches shall be operated by cable power or by an underground current of

electricity, or by any other power which is now or may at any time hereafter lawfully be used on either of the roads connected thereby, excluding always, however, the operation by locomotive steam power, or by the overhead trolley system of electric traction.

Resolved further, That this consent is also given upon the condition that the said corporations hereinbefore named shall pay into the treasury of the city of New York, to the credit of the sinking fund thereof, annually on November first of each year, the percentages provided for extensions or branches in section 95 of the railroad law, for the purposes, at the times, in the manner and upon the conditions set forth in such section.

Resolved further, That this consent is granted upon the further and express condition that the provisions of article four of the railroad law, pertinent thereto, shall be complied with by said corporations.

Adopted by the common council Sept. 18, 1894, two-thirds of all members present voting therefor.

Approved by mayor Sept. —, 1894.

Filed in county clerk's office Sept. —, 1894.

Metropolitan Street R. R. Co.

Consent of common council to connection between roads of Central Park, North and East River Railroad Company and Metropolitan Street Railway Company by route along West Broadway, Greenwich and Dey streets.

Whereas, the Central Park, North and East River Railroad Company and the Metropolitan Street Railway Company have heretofore, and by petition bearing date May 20, 1895, made application, in writing, to the common council of the city of New York for its consent and permission to be granted to the construction, maintenance and operation of the branches or extensions of the railroads and routes of the said Central Park, North and East River Railroad Company, and the Metropolitan Street Railway Company, as hereinafter particularly set forth.

I. That its consent be granted to the Central Park,

North and East River Railroad Company to extend its railroad and to construct, maintain and operate a branch thereof, commencing at the intersection of Dey street and West street, and connecting there by suitable curves, switches and appliances with the said company's existing tracks on West street; running thence easterly with double tracks in or upon Dey street to Greenwich street, and thence northerly in or upon Greenwich street to West Broadway (formerly College place, as widened), with double tracks to Vesey street, there to connect with a double-track extension or branch of the Metropolitan Street Railway Company.

II. To the Metropolitan Street Railway Company to extend its railroad and to construct, maintain and operate a branch thereof, commencing at the intersection of West Broadway and Duane street, and connecting there by suitable curves, switches and appliances with the company's existing tracks in said Duane street, running thence southerly in or upon West Broadway, with a single track to Chambers street, and thence southerly with double tracks, in or upon West Broadway (a portion of which was formerly College place), to Vesey street, there to connect with a double-track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company.

Said double tracks in West Broadway to be connected at Chambers street with the company's existing single track in Chambers street by suitable curves, switches and appliances.

III. To the maintenance and operation of the connection to be formed by the construction of said extensions, or branches, of the said two companies, and to the operation of the same as a new continuous or connected route for public travel; and

Whereas, the common council of the city of New York caused public notice of such application by said two railroad companies, and of the time and place when the same would be first considered, to be given by publication for at least fourteen days prior to the hearing in two daily

newspapers published in the city of New York, to wit, in the "Tribune," and in the "Times," which papers were lawfully designated for that purpose by his honor, the mayor of the said city; and

Whereas, after public notice given as aforesaid and at a public hearing held pursuant thereto, at the chambers of the board of aldermen, in the city hall, in the city of New York, whereat all persons so desiring were given an opportunity to be heard, such application has been first duly considered; and

Whereas, it is apparent from the proofs and evidence submitted by the said companies, that they desire to connect their said two surface routes at a point which is not over one half mile from the respective routes of the said two companies, and intend to establish, by the construction of said union and connection, a new route for public travel, and the said petitioners having consented to operate such connection as part of a continuous route for one fare; and it further appearing that such connection cannot be operated as an independent railroad without inconvenience to the public, but that it is to the public advantage that the same should be operated as a continuous line or route with the existing railroads; it is therefore

Resolved, That the consent of the common council of the city of New York be and it hereby is given:

1. That its consent be granted to the Central Park, North and East River Railroad Company to extend its railroad, and to construct, maintain and operate a branch thereof, commencing at the intersection of Dey street and West street, and connecting there, by suitable curves, switches and appliances with the company's existing tracks on West street; running thence easterly with double tracks in or upon Dey street to Greenwich street, and thence northerly in or upon Greenwich street to West Broadway (formerly College place, as widened), with double tracks to Vesey street, there to connect with a double track extension or branch of the Metropolitan Street Railway Company.

2. To the Metropolitan Street Railway Company to ex-

tend its railroad and to construct, maintain and operate a branch thereof, commencing at the intersection of West Broadway and Duane street, and connecting there by suitable curves, switches and appliances with the company's existing tracks in said Duane street; running thence southerly in or upon West Broadway with double tracks to Chambers street; and thence southerly, in or upon West Broadway (a portion of which was formerly College place), with double tracks, to Vesey street, there to connect with a double-track extension or branch of the railroad and route of the Central Park, North and East River Railroad Company.

Said double tracks in West Broadway to be connected at Chambers street with the company's existing single track in Chambers street by suitable curves, switches and appliances.

3. To the maintenance and operation of the connection to be formed by the construction of the said extensions, or branches, of the said two companies and to the operation of the same as a new, continuous or connected route for public travel; and

4. That the said companies, and each of them, be and they hereby are authorized to construct, maintain and operate such necessary connections, switches, sidings, turnouts, crossovers and suitable stands as shall be necessary for the convenient working of the said connection and for the accommodation of the cars to be run over the same.

Resolved also, That the conditions upon which, and not otherwise, this consent is given shall be and are as follows:

First. That this consent is also given upon the condition that the corporations owning or using the railroads of the petitioners shall operate such connection as a part of a continuous or connected route for one fare.

Second. That this consent is also given upon the condition that such extensions or branches shall be operated by cable power or by an underground current of electricity, or by any other power which is now or may at any time hereafter lawfully be used on either of the roads connected

thereby, excluding always, however, the operation by locomotive steam power or by the overhead trolley system of electric traction.

Third. That this consent is also given upon the conditions that the said corporations hereinbefore named shall pay into the treasury of the city of New York, to the credit of the sinking fund thereof, annually, on November 1st of each year, the percentages provided for extensions or branches in section 95 of the railroad law, for the purposes, at the times, in the manner and upon the conditions set forth in such section.

Resolved further, That the consent of the said common council to said petition is hereby given upon the further stipulation that the said applicants condition as follows:

1. The material to be used in the construction of said branches to be of the best possible character, and the plans of street construction, turntables and turnouts to be subject to the approval of the commissioner of public works of this city.

2. That cars shall be run on such extensions as often as public convenience shall require, and at least as frequently as shall be reasonably required by the ordinances of the city of New York, and the corporation petitioner which shall be operating the cars over the extensions herein granted shall, at the intersection of Chambers street and West Broadway, and at Dey and West streets, give to each passenger paying one single fare of five cents, a transfer ticket entitling such passenger to one continuous or connected trip to any point on the railroad on West street below Chambers street, from any portion of the extensions herein granted.

3. The applicants shall at all times during the operation of cars keep the street between the tracks of the extension in University place, Third and Fourth streets, West Broadway and Dey street, and two feet beyond the rail on each side, clean and free and clear from dirt and snow, the said dirt and snow to be removed by the said companies within such reasonable period of time as shall be required by the commissioner of street cleaning, and if

not so removed and carried to the dumps as required, the commissioner of street cleaning may have it done at the expense of the said railroad companies, the amount to be collected by the comptroller under due process of law.

4. The said companies shall pave University place, West Third and Fourth streets, West Broadway and Dey street, between the rails of the tracks and two feet in width outside of the tracks, to conform in all respects to the character of the pavement laid down on said streets, and shall keep the same in proper condition and repair, and shall also keep in repair as well the pavement between the tracks and two feet in width outside of the same, on the route described in the third section, and if not so done, the commissioner of public works may have it done at the expense of the said railroad companies, the amount to be collected by the comptroller under due process of law.

5. That the said railroad companies shall apply to each car a proper fender and wheel-guard conformable to such laws and ordinances as may hereafter be enacted or adopted by the State or city authorities.

6. That all cars of said railroad companies shall be properly and sufficiently heated and lighted.

7. That all laws now in force and all ordinances now in force and not inconsistent with any existing law, and any ordinance which may be hereafter adopted affecting the surface railroads operated in this city, shall be binding and strictly complied with by said companies, and also article IV. of the railroad law. A failure to comply with any condition of this consent for a period of twenty days after notice from the common council requiring said companies to comply therewith, shall render this consent forfeitable, and the same may be declared forfeited in an action instituted for such purpose by the corporation counsel at request of the common council.

I, WILLIAM H. TEN EYCK, the clerk of the common council of the city of New York, do hereby certify that

the foregoing resolution was duly passed and adopted by the board of aldermen of the city of New York on the 20th day of March, 1896, twenty-six of all the members of such board voting in favor of the adoption of such resolution and four members voting in opposition thereto, being a vote by a majority of all the members elected to the said board.

That the said resolution was duly returned to me after the same had been vetoed by the mayor of the city of New York, on the 31st day of March, 1896, and on the 14th day of April, 1896, was taken up, re-considered and adopted notwithstanding the objections of his honor, the mayor, twenty-seven members of said board voting in favor of the adoption of the said resolution, and no members in opposition thereto, and the said resolution thereby took effect as provided for in section 75 of chapter 410 of the Laws of 1882.

In witness whereof, I have hereunto set my hand and affixed the seal of the city this 22d day of April, 1896.

WM. H. TEN EYCK,
Clerk Common Council.

[SEAL.]

STATE OF NEW YORK, }
City and County of New York, } ss.:

I, HENRY D. PURROY, clerk of the said city and county, and clerk of the Supreme Court of said State for said county, do certify that I have compared the preceding with the original application of the Central Park, North and East River Railroad Company and the Metropolitan Street Railway Company for extensions on file in my office, and that the same is a correct transcript therefrom, and the whole of such original.

Filed, Apr. 22, 1896.

In witness whereof, I have hereunto subscribed my name and affixed my official seal this 23d day of April, 1896.

HENRY D. PURROY,
Clerk.

[SEAL.]

Ninth Avenue R. R. Co.

Consent of common council to construction of railroad from Amsterdam avenue along 125th street, the Boulevard, and 130th street to Fort Lee ferry, purchased at comptroller's sale June 18, 1895, by the Metropolitan Street Railway Company.

Whereas, the Ninth Avenue Railroad Company, pursuant to the railroad law, heretofore and on March 21, 1893, made an application in writing to the common council of the city of New York for its consent and permission to be granted to said Ninth Avenue Railroad Company, its successor, successors, lessees and assigns, to construct, maintain and operate a street surface railroad for public use in the city of New York, connecting with the tracks of said company already constructed, as an extension thereof, in the streets and avenues of the city of New York, hereinafter named; and

Whereas, the common council caused public notice of such application and of the time and place when the same would be considered to be given by publication daily, for at least fourteen days prior to the hearing, in two daily newspapers of the city of New York, to wit, in the New York "*Sun*," and in the New York "*Daily News*," which papers were lawfully designated for that purpose by his honor the mayor of said city; and

Whereas, after public notice given as aforesaid and at a public meeting in pursuance thereof duly held, whereat all persons so desiring were given an opportunity to be heard and were heard, such application has been duly considered by the common council; it is therefore

Resolved, That the consent of the common council be and it hereby is given, to said Ninth Avenue Railroad Company, its successor, successors, lessees and assigns, to construct, maintain and operate a street surface railroad for public use in the city of New York, with double tracks connecting with the tracks of said company already constructed, as an extension thereof, upon and over the

surface of the following streets, avenues and highways in the city of New York: upon and along West One hundred and twenty-fifth street, from the junction of said street with the line of said company at Amsterdam avenue, westerly to the Boulevard; thence along and upon the Boulevard in a northerly direction to West One hundred and Thirtieth street; thence along and upon West One hundred and Thirtieth street westerly to Twelfth avenue, and thence across and along Twelfth avenue to a point on the west side of said avenue at or near Manhattan street, and at or near Fort Lee ferry; together with all necessary connections, switches, sidings, turnouts, turntables, curves and suitable stands for the convenient working of said railroad and for the accomodation of the car to be run thereon.

Resolved further, That the conditions upon which and not otherwise, this consent is given shall be and are as follows:

That the right, privilege and franchise of using said streets and avenues to construct, maintain and operate a street surface railroad thereon as a branch or extension of the Ninth Avenue railroad shall be sold at public auction to the highest bidder which shall be a duly incorporated railroad corporation of this State organized to construct, maintain and operate a street surface railroad in the city of New York, for which this consent may be given, and which shall agree to give the largest percentage per annum of the gross receipts of such branch or extension, as defined by section 93 of the railway law of this State, with adequate security, by bond or undertaking, in writing and under seal, in such form and amount, and with such conditions and securities as may be required and approved by the comptroller of the city of New York for the fulfillment of said agreement and for the commencement and completion of such road, according to the plan or plans and along the route fixed for its construction and within the time designated and prescribed by the laws now prevailing and applicable thereto.

Resolved, That cars shall be run upon such branch or

extension as frequently as the convenience of the public may require; and if the right to construct and operate such branch or extension shall be purchased at said sale by the company applying for this consent, the same shall be operated as a part of the continuous line of the applicant, so as to enable any passenger, by transfer tickets or otherwise to obtain the benefit of a continuous ride, for one fare, to and from any point on said branch or extension to any point on the lines of the railroad company applying for this consent, whether the same be owned or leased by said company. And if the right to construct and operate such branch or extension shall be purchased at such sale by any corporation other than the applicant for this consent, such purchaser shall deliver and receive passengers without extra charge or compensation at the point or junction with the road of the applicant, upon a division of earnings from such joint business, in the proportion that the length of the extension or branch so sold shall bear to the length of the road of the company applying for this consent, whether owned or leased, together with the mileage of such branch or extension.

This consent is further conditioned that if the right to construct and operate such branch or extension shall be purchased by the company applying for this consent, the percentage to be paid upon gross receipts on behalf of such branch or extension shall be calculated upon such portion of the gross receipts of the applicant as shall bear the same proportion to the whole amount thereof as the length of such branch or extension shall be to the entire length of the road owned or leased.

This consent is further conditioned that no passenger shall be charged more than five cents for a continuous ride, upon, from or to the above branch or extension under the conditions as to connections herein in this consent provided.

This consent is also given upon the condition that such extension or branch may be operated by horse power or any power other than the overhead trolley system and locomotive steam power.

Resolved further, That this consent is given upon the express condition, that the provisions of article 4 of the railroad law, pertinent thereto, shall be complied with by the company acquiring the right to construct and operate such extension or branch.

Adopted by board of aldermen, December 19, 1893.

Approved by the mayor, January 8, 1894.

Filed with the clerk of New York county, January 25, 1894.

THE TWENTY-THIRD STREET RAILWAY COMPANY.

An act to authorize the construction of a railroad through Twenty-third street, in the city of New York.

(Laws of 1869, Ch. 823, p. 1946.)

Passed May 10th, 1869.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1 The commissioners of the sinking fund of the city of New York, are hereby authorized and required within twenty days after the passage of this act to advertise for two weeks, in at least two of the daily papers published in said city, that they will on a certain day and at a certain place to be therein specified, sell at public auction to the highest bidder, the right, privilege and franchise to construct, operate and use a railroad with a double track, and the necessary turnouts and switches for the proper working of the same, through, along and upon Twenty third street in the city of New York from the North river to the East river. Such sale shall be conducted in the ordinary manner of sales at auction, and the person or corporation who shall offer to pay into the city treasury the largest sum of money for such right, privilege or franchise, shall receive from said commissioners a certificate that he or they are entitled to such grant and are authorized to construct, operate and use

the same in accordance with the provisions of this act; such certificate to be issued on the payment within ten days into the city treasury of the amount of the bid, and on the execution of a bond, to the said commissioners in such form and for such an amount as they shall prescribe conditioned that the person or corporation receiving such certificate will within four months finish and complete said road and equip the same with the requisite number of cars and horses, but should he or they be restrained or prevented by any legal proceedings from constructing and completing the same, the time during which they are so restrained, shall not be deemed or taken to be part of the time within which the same is to be completed.

Sec. 2. The party or corporation receiving such certificate is hereby authorized and empowered to lay, construct and operate a railroad with a double track through, along and upon Twenty-third street in the city of New York from the North river to the East river, with the necessary connections, turnouts and switches for the proper working of the same.

Sec. 3. Said railroad shall be constructed on the most approved plan for the construction of city railroads, and with the rail now used upon the street railroads in Philadelphia, commonly called the Philadelphia rail, and shall be run as often as the convenience of passengers may require, and shall be subject to such reasonable rules and regulations in respect thereto as the common council of the city of New York may from time to time by ordinance prescribe, and the said party or corporation are hereby authorized to charge the same rate of fare for the conveyance of passengers on said railroad as is now charged by other city railroads in said city.

Sec. 4. In the construction, operation or use of such railroad upon the route above designated, should such person or corporation deem it necessary or proper to run upon, intersect or use any portion of other railroad tracks now laid upon said street above named, *he* or they are hereby authorized to run upon, intersect and use the

same; and in case they cannot agree with the owner or owners thereof respecting the compensation or payment to be made therefor, then the amount of such compensation or payment shall be ascertained and determined in the manner provided by subdivision six of the twenty-eighth section of the act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty. And should any real estate or interest therein be required for the purpose of constructing said railroad as above specified and authorized, for which the said person or corporation shall be unable to agree with the owner or owners for the use or purchase thereof, they may acquire the right to use or title to the same in the manner specified in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first sections of the said act of April second, eighteen hundred and fifty, except that in any of the proceedings for any of the purposes authorized by this section it shall not be necessary that the petition to the supreme court shall make any allegations of or reference to any incorporation, capital stock, surveys or maps or of the filing of any certificate of location. But in all cases the use of said street for the purposes of said railroad as herein authorized shall be considered a public use consistent with the uses for which the mayor, aldermen and commonalty of said city hold said street. Nothing in this act contained shall authorize or allow the existence of more than two tracks in any part of said street.

Sec. 5. The legislature may at any time alter, amend or repeal this act.

Sec. 6. This act shall take effect immediately.

An Act to amend an act entitled "An act to authorize the construction of a railroad through Twenty-third street in the city of New York, passed May 10th, 1869," so as to authorize the comptroller of the city of New York to carry into effect the powers conferred by the first section of the above act upon the commissioners of the sinking fund of the city of New York, in relation to the advertising and sale of the franchise for building such railroad to the highest bidder on paying the amount of such bid or giving security for such payment satisfactory to said comptroller, to issue the certificate of title to such grant mentioned in said first section of said act to Sidney A. Yeomans or to his assigns, and granting all the rights, privileges, powers and benefits conferred and prescribed in the second, third and fourth sections of said act to said Sidney A. Yeomans and his assigns, and requiring him or his assigns to finish, complete and equip said road within eight months from the time of receiving such certificate.

(Laws of 1872, Ch. 521, p. 1209.)

Passed May 6, 1872.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The comptroller of the city of New York is hereby authorized and directed, on the payment into the city treasury by Sidney A. Yeomans of the sum of one hundred and fifty thousand dollars, that being the amount of his bid, which was accepted and tendered to the commissioners of the sinking fund on the tenth day of June, A. D. eighteen hundred and sixty-nine, or upon the giving of such security for the payment thereof as shall be satisfactory to said comptroller, to issue to said Sidney A. Yeomans, or to whoever the said Sidney A. Yeomans shall assign the same, the certificate required to be issued by the said commissioner of the sinking fund, in and by the provisions of the act of the legislature of the State of New York, entitled 'An act to authorize the construction of a

railroad through Twenty-third street, in the city of New York,' passed May tenth, eighteen hundred and sixty-nine, that he or they and their successors and assigns are entitled to the grant of the rights, privileges and franchises mentioned, described and conferred in and by said act.

SECTION 2. The said Sidney A. Yeomans and his assigns upon receiving such certificate shall thereby be invested with all the rights, privileges, benefits and franchises that might or could be given, granted or conferred upon him and them by the commissioners of the sinking fund under any and all the provisions of said act or by said act.

SECTION 3. All the rights, privileges, powers and benefits granted, conferred and prescribed in and by section second, third and fourth of said act, shall inure to the benefit of said Sidney A. Yeomans and his assigns in the same manner, and be of the same effect as if the said commissioners of the sinking fund had received and accepted the tender of said amount and issued the certificate required by said act, provided only that said Sidney A. Yeomans and his assigns should be required to finish, complete and equip said road within eight months from the time of receiving said certificate.

SECTION 4. Should said Sidney A. Yeomans or his assigns be restrained or prevented by any legal proceedings from constructing and completing the said road, the time during which they are so restrained shall not be deemed or taken to be a part of the time within which the same is to be completed.

SECTION 5. This act shall take effect immediately.

Assignment.

Sydney A. Yeomans
to
Twenty-third Street Railway Company.

Know all men by these presents, that I, Sidney A. Yeomans, of the City of New York, the person named in the act of the legislature of the State of New York,

hereinafter mentioned, for and in consideration of the sum of one hundred and thirteen thousand dollars lawful money of the United States of America, to me in hand paid by the Twenty-third Street Railway Company, the receipt of which is hereby acknowledged, have granted, bargained, sold, assigned, transferred and conveyed, and by these presents do grant, bargain, sell, assign, transfer and convey unto the said Twenty-third Street Railway Company, its successors and assigns forever, all my estate, rights, powers, privileges, benefits, franchises and interest conferred upon, owned or possessed by me under or by virtue of an act of the legislature of the State of New York entitled "An act to amend an act entitled 'An act to authorize the construction of a railroad through Twenty-third street, in the city of New York,' passed May 10th, 1869, so as to authorize the comptroller of the city of New York to carry into effect the powers conferred by the first section of the above act upon the commissioners of the sinking fund of the city of New York, in relation to the advertising and sale of the franchise for building such railroad to the highest bidder on paying the amount of such bid, or giving security for such payment satisfactory to said comptroller, to issue the certificate of title to such grant mentioned in said first section of said act to Sidney A. Yeomans, or to his assigns, and granting all the rights, privileges, powers and benefits conferred and prescribed in the second, third and fourth sections of said act to Sidney A. Yeomans and his assigns, and requiring him or his assigns to finish, complete and equip said road within eight months from the time of receiving such certificate," passed May 6th, 1872.

And also all my estate, rights, powers, privileges, franchises, benefits and interest to which I am, or may be, entitled as purchaser or bidder under or by virtue of an act of the said legislature entitled "An act to authorize the construction of a railroad through Twenty-third street, in the city of New York," passed May 10, 1869.

To have and to hold to it, the said Twenty-third Street Railway Company, its successors and assigns forever.

And I, the said Sidney A. Yeoman, hereby make, constitute and appoint the said Twenty-third Street Railway Company, my true and lawful attorney, to take all lawful ways and means to obtain from the commissioners of the sinking fund or the comptroller of the city of New York, mentioned in said act, the certificate therein mentioned in my name or otherwise, but for its and its successors' and assigns' use and benefit, and generally to do and perform all and every act, matter or thing that can or may be requisite in or about the premises.

In witness whereof, I, the said Sidney A. Yeomans, have hereunto set my hand and seal this eleventh day of July, in the year one thousand eight hundred and seventy-two.

SIDNEY A. YEOMANS. [SEAL.]

Signed, sealed and delivered in the presence of
J. FRED'K FLANAGAN.

City and County of New York, ss.:

On this 11th day of July, 1872, before me came Sidney A. Yeomans, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

RICH'D STACPOOLE,
Notary Public.

Certificate of Title to Franchise.

Whereas, the legislature of the State of New York, on the 6th day of May, 1872, passed an act entitled 'An act to amend an act entitled "An act to authorize the construction of a railroad through Twenty-third street, in the city of New York, passed May 10, 1869, so as to authorize the Comptroller of the city of New York to carry into effect the powers conferred by the first section of the above act upon the commissioners of the sinking fund of the city of New York, in relation to the advertising and sale of the franchise for building such railroad to the

highest bidder on paying the amount of such bid, or giving security for such payment satisfactory to said comptroller, to issue the certificate of title to such grant mentioned in said first section of said act to Sidney A. Yeomans or to his assigns, and granting all the rights, privileges, powers and benefits conferred and prescribed in the second, third and fourth sections of said act to said Sidney A. Yeomans and his assigns, and requiring him or his assigns to finish, complete and equip said road within eight months from the time of receiving such certificate," whereby the comptroller of the city of New York is "authorized and directed, on the payment into the city treasury by Sidney A. Yeomans of the sum of one hundred and fifty thousand dollars, that being the amount of his bid which was accepted and tendered to the commissioners of the sinking fund on the tenth day of June, A. D. eighteen hundred and sixty nine, or upon the giving of such security for the payment thereof as shall be satisfactory to said comptroller, to issue to said Sidney A. Yeomans, or to whoever the said Sidney A. Yeomans shall assign the same, the certificate required to be issued by the said commissioners of the sinking fund in and by the provisions of the act of the legislature of the State of New York, entitled "An act to authorize the construction of a railroad through Twenty-third street, in the city of New York," passed May tenth, eighteen hundred and sixty-nine; that he or they and their successors and assigns are entitled to the grant of the rights, privileges and franchises mentioned, described and conferred in and by the said act;

And whereas, it appears by an instrument of assignment duly filed in the department of finance, that the said Sidney A. Yeomans has this day duly transferred and assigned unto the Twenty-third Street Railway Company, a corporation organized under and in pursuance of the general railroad laws of the State of New York, the said certificate and the rights, privileges and franchises described and conferred in said acts;

And whereas, the said Sidney A. Yeomans has this

day paid into the city treasury the sum of one hundred and fifty thousand dollars;

Now, therefore, I, Andrew H. Green, comptroller of the city of New York, do, in pursuance of the provisions of the act passed May 6th, 1872, first above mentioned, hereby certify that the said Twenty-third Street Railway Company is entitled to the grant, right, privilege and franchise as mentioned and conferred in and by the aforesaid act, passed on the tenth day of May, 1869, and is authorized to construct, operate and use the same in accordance with the provisions of said act:

Provided that the said Twenty-third Street Railway Company shall finish, complete and equip the railroad mentioned in said acts within eight months from the time of receiving this certificate.

In witness whereof, I have hereunto set my hand this eleventh day of July, A. D. one thousand eight hundred and seventy-two.

AND. H. GREEN,
Comptroller of the City of New York

In the presence of—
RICH'D A. STORRS.

THIRTY-FOURTH STREET EXTENSION.

An act to authorize the Twenty-third Street Railway Company in the City of New York to extend their tracks, and use and operate the same.

(Laws of 1873, Ch. 100, p. 177.)

Passed March 19, 1873.

The People of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The Twenty-third Street Railway Company is hereby authorized and empowered to lay, construct, use and operate railroad tracks in connection with their present railroad, through and along the Second avenue, with a double track to Twenty-eighth street, thence through and along Twenty-eighth street; with a single track to

the First avenue; thence through and along the First avenue, with a single track to Twenty-ninth street; thence through and along said First avenue, with a double track to Thirty-fourth street; also through and along Twenty-ninth street with a single track from said track in the First avenue to the Second avenue; and thence through and along said Second avenue, with a single track to the southerly side of Twenty-eighth street, together with all necessary and proper connections, switches, curves, turnouts, side tracks and turntables, for the complete use and operation of their said road and the extensions herein granted; and the said railway company shall remove and dump in the East river, at the most convenient point, the snow on Twenty-ninth and Twenty-eighth streets from First to Second avenues, when the same is of sufficient depth to interfere with the ordinary travel on said street.

SECTION 2. The said company is hereby authorized to intersect, run upon and use the track of any railroad now laid on said avenue, and in case agreement shall not be made with the owner or owners of such other railroad tracks, in respect to the payment or compensation to be made therefor, or for the use thereof, then the amount of such compensation or payment shall be ascertained and determined in the manner provided by subdivision six of the twenty eighth section of the act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and fifty. And should any real estate or interest thereon be required for the purpose of constructing said railroads so authorized to be extended, for which the said company or its successors shall be unable to agree with the owner or owners for the use or purchase thereof, said company may acquire the right to use or title to the same in the manner specified in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first sections of the act entitled 'An act to authorize the formation of railroad corporations and to regulate the same,' passed April second, eighteen hundred and

fifty, except that in any of the proceedings for any of the purposes authorized by this act, it shall not be necessary that the petition to the supreme court shall make any allegations of or reference to any incorporation, capital stock, surveys or maps, or of the filing of any certificate of location. But in all cases the use of said streets and avenues for the purposes of said railroads, as herein authorized, shall be considered a public use consistent with the uses for which the mayor, aldermen, and commonalty of said city hold said streets and avenues.

SECTION 3. In construction, use and operation by the said company of the track and extension authorized by this act, they shall have and exercise the same rights and privileges which are now possessed and exercised under former grants and laws.

SECTION 4. The said railway company may charge the same fare for the conveyance of passengers over their route as hereby extended as they are now authorized to charge, but shall not be allowed to charge any additional rate of fare for their entire route or any part thereof, because of the extension hereby granted; and cars shall be run on said extension as often as the convenience of passengers shall require.

SECTION 5. This act shall take effect immediately."

CENTRAL CROSSTOWN RAILROAD COMPANY.

An act to authorize the transportation of passengers in the city of New York by means of street railways, to be constructed through certain streets and avenues therein.

(Laws of 1873, Ch. 160, p. 262.)

Passed March 28, 1873.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. John Sullivan, William Thompson, John L. Macaulay, Emmett D. Burr, Henry W. Prosser, Anton Stone, Albert H. Combs, Augustus F. Brainard, Benjamin F. Judson, Edward O. Gould, Thomas S. Ball, Richard

C. Tilford, Edward C. Taylor, John T. Mackenzie, Fred. S. Gibbs, George C. Annis, J. M. Noyes, William J. Trimble, James Adams, Dayton S. Morgan, James Moran, James Bain, William Colligan, Byron Ward, Eugene B. Gere, George H. Allen, Stillman A. Clark, Alexander W. Shepherd, Richard B. Hill, Allen D. Tracy, Henry J. Brewer, Theodore Rodgers, Martin V. Forman, Daniel Stratton, Harry Walter, E. C. Johnson, Edson J. Wilson, Charles D. Culver, Sidney B. Roby, William White, William M. Shipman, Harmon D. Hull, Thomas Kivlin, Joseph Messinger, William H. Hutchinson, Robert W. Murray, Edward Sellick and their assigns, are hereby authorized and empowered to lay, construct, operate, maintain and use railways, with a double or single track, in the city of New York, and to convey passengers thereon for compensation, through, upon and along the following routes of said city, to wit: Commencing at the foot of Twenty-third street, East river; thence through and along Twenty-third street to Avenue A, with double tracks; thence through and along Avenue A, with double tracks to Seventeenth street; thence through and along Seventeenth street with a single track to Broadway and Union square; thence through and along Broadway and Union square, with double tracks, to Fourteenth street; thence through and along Fourteenth street, with double tracks, to Seventh avenue; thence through and along Seventh avenue, with double tracks, to Hammond or West Eleventh street; thence through and along Hammond or West Eleventh street, with double tracks, to West street; thence through and along West street, with double tracks, to Christopher street, at the foot of Christopher street, North river. Returning—from the foot of Christopher street, North river; thence through and along Christopher street, with a single track, to Greenwich street; thence through and along Greenwich street, with a single track, to Hammond or West Eleventh street; thence through and along Hammond or West Eleventh street, with double tracks, to Seventh avenue; thence through and along Seventh

avenue, with double tracks, to Fourteenth street, thence through and along Fourteenth street, with double tracks, to Broadway and Union square; thence through and along Broadway and Union square to Eighteenth street; thence through and along Eighteenth street, with a single track, to Avenue A; thence through and along Avenue A, with double tracks, to Twenty-third street; thence through and along Twenty-third street with double tracks to the East river, at the foot of Twenty-third street, together with the necessary connections, turn-outs, switches and convenient stands for the proper working and accommodation of said railway on the said route.

SECTION 2. Said railways shall be constructed on the most approved plan for the construction of city railways, and with the rail now used upon the street railroads in Philadelphia, commonly called the Philadelphia rail; and cars shall be run as often as the convenience of the public may require, and shall be subject to such reasonable rules and regulations in respect thereto as the common council of the city of New York from time to time prescribe, and to the payment to the city of such license fee annually for each car run thereon as shall be prescribed by the common council thereof, but not exceeding the amount authorized by any ordinance heretofore passed; and the said persons and their assigns are hereby authorized to charge and collect five cents for each passenger conveyed upon said railways. Whenever the track or tracks of said railway shall cross or intersect the track or tracks of any railroad, by mutual agreement, between the owners of said respective railways, transfer tickets may be issued to passengers at an additional rate of fare not exceeding two cents, said transfer tickets to be received in full for fare to any point on the line of said railroads, or either of them.

SECTION 3. In the construction, operation or use of said railways upon the route or routes herein designated, the said persons or their assigns shall use any portion of any other railroad tracks now laid upon any of the streets or

avenues, above named, except West street, where a double track shall be constructed, and they are hereby authorized to run upon, along and over, and intersect and use the same; and in case they cannot agree with the owner or owners thereof respecting the compensation or payment to be made therefor, then the amount of such compensation or payment shall be ascertained and determined in the manner provided by subdivision six of the twenty-eighth section of the act entitled 'An act to authorize the formation of railroad corporations, and to regulate the same,' passed April second, eighteen hundred and fifty.

And should any real estate or interest therein be required for the purpose of constructing said railways on said route or routes, as herein specified and authorized, for which the said persons above named, or their assigns, shall be unable to agree with the owner or owners for the use or purchase thereof, they may acquire the right to use or title to the same in the manner specified in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth and twenty-first sections of said act of April second, eighteen hundred and fifty, as the same is amended by subsequent acts; except that in any of the proceedings for any of the purposes authorized by this section, it shall not be necessary that the petition to the supreme court shall make any allegation of or reference to any incorporation, capital stock, surveys or maps, or of the filing of any certificate of location; and during the pendency of such proceedings, the said persons or their assigns shall be permitted to enter upon, connect with and use portions of other tracks already laid in any of the streets or avenues named therein as may be necessary to perfect and carry into effect the provisions of this law, upon their giving good and sufficient security, to be approved by one of the justices of the supreme court, for the payment of the amount of the award, which may be made by arbitration or by order of the supreme court; and all actions or proceedings in law relating to, affecting or arising under this act, or the authority hereby given, shall

be commenced in the supreme court of the first judicial district and shall have preference over all cases on the calendar of said court not now preferred by statute; but in all cases the use of said streets or avenues for the purposes of said railways, as herein authorized, shall be considered one of the uses for which the mayor, aldermen and commonalty of said city of New York hold said streets and avenues.

SECTION 4. A majority of the first fifteen persons or grantees named in the foregoing first section of this act shall, as soon as practicable after its passage, by a notice in writing signed by them, convene a meeting of the persons or grantees named in said first section, or their assigns, at a time and place in the city of New York, to be designated in said notice. A copy of said notice shall be served upon each of the other grantees or their assigns, either in person, or by depositing the same in the post office addressed to him at the post office nearest his last known place of residence or business, at least twenty days before the day therein specified for such meeting.

SECTION 5. And for the rights and privileges herein granted the said persons or their assigns shall annually on the first day of December of each year, pay into the treasury of the city of New York three per centum of the gross receipts from the operation of the railroad, the amount of which gross receipts shall be determined by the sworn statement of the president and treasurer of said railroad, but subject to the inspection of their books by the comptroller of the city.

SECTION 6. The legislature may at any time alter, amend or repeal this act.

SECTION 7. This act shall take effect immediately.

MESSAGE OF GOVERNOR CLEVELAND RELATING TO LAWS 1884, CH. 252.

(Public Papers of Governor Cleveland, 1884, pp. 108–117.)

State of New York,
Executive Chamber,
Albany, May 6, 1884.

Memorandum filed with Senate Bill No. 296, entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages." Approved.

This bill, in its various stages, has given rise to exceptional discussion, and the hopes and expectations of many people regarding the action of the Legislature and of the Executive in disposing of the measure have given me proof that extensive private interests are involved. Painful rumors have been rife touching the methods employed by rival parties to accomplish legislative results. These, I hope, are baseless, but they have, I fear, led many honest men to believe that the measure is wholly iniquitous and vicious. I am inclined, for their information, to state, perhaps imperfectly, but as briefly as possible, the general features of the bill and some considerations which have constrained me to approve the same.

The Constitution of the State prohibits the passage by the Legislature of any private or local bill "granting to any corporation, association or individual the right to lay down railroad tracks."

It is also therein provided that the Legislature shall pass general laws providing for the cases enumerated in the section containing the above prohibition, and this requirement is supplemented by the following restriction:

> "But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in

value of the property bounded on, and the consent also of the local authorities having the control of that portion of the street or highway upon which it is proposed to construct or operate such railroad be first obtained, as in case the consent of such property owners cannot be obtained, the General Term of the Supreme Court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners."

It is apparent that any law which permits the laying down of a street railroad track must be general in its character and not "private or local."

It is also quite plain that, under the Constitution, the duty is enjoined upon the Legislature to provide, by law, for the construction of street railroads, and that any law passed for that purpose must be in accordance with the specifications of the Constitution above quoted.

Not only is it the duty enjoined by the Constitution upon the Legislature to provide the people of the entire State with laws under which this means of convenient transit may be furnished them, but the necessity of such legislation is freely conceded. Every year efforts have been made to supply this want, but the apparent impossibility of freeing measures, introduced or passed, ostensibly for that purpose, from objectionable features, have caused their miscarriage.

The result of the last attempt in this direction is now presented to me for official action. I cannot avoid the conviction that it is my duty to examine this bill uninfluenced by any prejudices which might well be aroused from the alleged circumstances connected with its passage, and without giving undue weight to certain local and private interests; and if, upon a careful consideration of all the provisions of the bill, it seems to me to be drawn in conformity to constitutional requirements, and to be a

measure which all the people of the State need and are entitled to at the hands of the Legislature, I conceive it to be an obligation resting on me to give it effect, provided, always, that it does not violate any private rights, fixed and vested.

On the 29th day of May, 1883, a bill which had been passed by the Legislature, and which purported to be a general bill authorizing the construction of street railways, was disapproved for the reason that it seemed to me to contain provisions calculated to subserve special interests instead of the welfare of the whole people, and appeared to be constructed with but little reference to the territory of the entire State. In the memorandum filed with the disapproval of the bill, I fully committed myself to the statement that a general law providing for the construction of street railroads should be enacted, but in connection with such statement, used the following language:

> "It cannot be difficult to frame a bill which in spirit, as well as in strict construction, would be a general law, protecting all localities alike, and avoiding the evils sure to follow a further attempt, under the guise of a general statute, to answer only private and local purposes."

The bill under consideration seems to me to nearly fulfill the requirements above indicated, and to meet the demand for a law permitting the extension of street railroad facilities throughout the State. The objectionable features of the bill, disapproved in 1883, appear to be wholly eliminated.

The consent of the local authorities and the property owners upon the street are not available unless they are obtained after the passage of the act. This is not only just to the local authorities and present property owners, but it places all those desiring to construct railroads under the act upon an equal footing. No consent heretofore obtained under different circumstances from the predecessors of local authorities or owners can be made available, as they ought not.

The provision requiring the public authorities to give fourteen days' notice in two newspapers before acting upon any application for consent to the construction or extension of a road is a prudent and valuable feature of the bill, taken in connection with the provision that, at the option of the authorities of any city or village, the franchise asked for may be sold at auction. The publicity thus given to the proposed enterprise, if it is deemed of value, will stimulate competition and prevent the local authorities from giving away a franchise which should be sold to the highest bidder.

The tax which may be imposed upon the gross earnings of roads constructed or extended in cities and villages, to be paid into the treasury of such cities and villages, and the stringent provisions contained in the bill to compel its prompt payments, commend the measure as one likely to yield to the people of the localities a substantial return for the franchises conferred.

The power given to the local authorities to make reasonable regulations as to rate of speed, mode of use of tracks, and the removal of snow and ice, and to enforce compliance therewith under heavy penalties supplies in this bill an element of local control not heretofore so completely provided for, and manifestly essential for the protection of the public.

The limitation of fare to five cents on all roads to be constructed under the act, or to the present authorized rates upon such as have already been constructed, and their extensions, gives to the public the benefit of carriage on all extensions of existing roads without additional fare, and provides a cheap maximum rate for all new roads.

The provision that roads may use each other's tracks and lines for a distance of one thousand feet is just, and will prevent existing roads from unreasonably obstructing the completion of new ones, which require the use of the tracks of such companies to connect parts of the proposed new line. A less distance would prevent new roads from using existing tracks for a sufficient distance to pass long blocks.

All street surface railroad companies are permitted by the act to use any kind of motive power except locomotive steam power. Thus the competition between horse roads and cable roads and roads seeking to introduce other motive power, except the steam locomotive, is left free and open to the choice of the local authorities and the property owners.

A further detailed statement of the provisions of this bill need not here be given, except as they are involved in the objections which are urged against it.

It is said that the consent of those owning one-half of the lineal feet fronting on the street in which the road is proposed, as well as those owning one-half in value, should be required; that the public interest in the City of New York would be better protected if the consent of the Commissioners of the Sinking Fund or some other Board should be required, instead of the Board of Aldermen, and that Fifth avenue and Broadway should be exempted from the bill.

The answer to such objection is at hand. The bill follows the exact language of the amended Constitution in these respects. There would be no safety in doing less. And, as far as the objection touching the local authorities, whose consent is necessary, is concerned, the law now gives to the Common Council of the City of New York power "to regulate the use of the streets, highways, roads and public places, by foot passengers, animals, vehicles, cars and locomotives." As long as this remains the law, and as long as the Constitution requires that "the consent of the local authorities having control" of the street shall be obtained, it is hard to see how the consent of any other authority than the Common Council would comply with the Constitution. Waiving the question of the legal effect of the exemption of any street from the operation of the acts, I think such an exception would neither be consistent nor expedient.

The objection that existing roads should pay a percentage on the receipts from their entire line in case of an extension, it seems to me, is not tenable. Their existing lines were not

built in contemplation of any such tax, and if they are extended under the act, it is more just and equitable to charge them with a tax on some portion of their receipts than on the whole. I know of no more fixed and definite rate than to put the tax upon such a proportion of their receipts as their extension bears to the entire line. This is the rule adopted in the act.

It is alleged that the bill permits a street railroad to be laid out and constructed along public parks, with the consent of the local authorities and one-half only of the property owners on the opposite side of such parks. This is a misapprehension. The consent of the owners opposite is in addition to the consent required in other sections of the bill, and by the Constitution.

Objection is made that a company may, under the consent of the local authorities, occupy a street and delay the completion of its road unreasonably, in the meantime excluding other like enterprises. But it seems to me this bill guards with great care against such a state of things. All consent must be obtained after the passage of the act. Any consent given by the local authorities shall cease and determine at the expiration of one year, unless prior to that time the company shall have obtained and filed the necessary consents of the property owners or the determination of the commissioners provided for by the Constitution, in lieu thereof. I do not understand that such company can occupy a street at all until such consents are both obtained. It must begin the construction of its road within one year, and complete it within three years from the time of giving such consents, or its rights, privileges and franchises acquired under the act shall cease and determine. During the pendency of legal proceedings the Supreme Court is given power to extend the period for the performance of any of the required acts. Of course, this means the performance of any act which may be prevented by legal proceedings. I fail to see any valid objection to granting an extension in such a case or vesting the power to do so in the Court.

Another objection opposed to the bill is based upon the

language of its fifteenth section, which permits any street surface railroad to lease or transfer its rights, subject to all of its obligations, to run upon or use any portion of its tracks, to any other street surface railroad company which is authorized to run upon such routes, upon such terms as shall be agreed upon by their board of directors, subject to the approval of their stockholders. If no such section were in the bill, I am of the opinion that such leases or transfers could be made by the directors alone under a law which was passed as long ago as 1839. It is wise and safe to give the stockholders a voice in the matter.

It is strongly urged that the bill should oblige the local authorities, in all cases, to put these franchises up at auction, and sell the same to the highest bidder. Such a provision might have resulted in no harm, though throughout the State in a large majority of cases, the price bid would have been nominal. The proposition that the sale at auction should be obligatory gains much of its supposed force from the contemplation of the condition of affairs in the City of New York. But this legislation is for the entire State; and with the advertisement of application for franchises provided for in the bill, and the competition which would follow, if the same were of value, and with a close regard on the part of the local authorities to the interests of the people which they represent, the localities, I think, will be sufficiently protected. If the local authorities are determined to cheat and defraud their constituents by refusing to put up a valuable franchise at auction, they must, under this bill, do it in the broad light of day, and with a brazenness and boldness that would find a way to evade the most carefully framed law.

The last objection which I shall notice is to section sixteen of the bill, which prohibits the construction of any street railroad to run in whole or in part upon the surface of any street, under the provisions of chapter six hundred and six of the Laws of 1875. This is commonly called the rapid transit act, and though it has been in force nine years, with no other

law for the construction of surface street railroads, none has ever been built under that statute. It has, I think, been generally supposed that its provisions only authorized, or, at least, were only intended to authorize the construction of elevated or underground roads. There has lately been formed, in the City of New York, a company for the purpose of introducing the cable system of propelling street cars in that city. At the instance of this company, I suppose, commissioners have been appointed by the Mayor of the City of New York, under the Rapid Transit Act, who have gone so far as to lay out routes in many of the streets of the city, amounting to about seventy-two miles, for the occupancy of the cable company. These proceedings, if carried to completion, would probably give to this company the occupancy of so many streets that any remaining routes would be of little comparative value. Its claim now is, that this bill, by preventing it from proceeding further under the Act of 1875, inflicts upon it a great wrong and deprives it of rights to which it is fairly entitled.

Of course these proceedings have not gone far enough to give this company any legal claim; but if the law under which it has proceeded is applicable to surface roads, and if in good faith they have done these things, which entitle it equitably to retain whatever advantages it has acquired, its claims should not be lightly disregarded.

On the other hand, a measure as complete as this bill, now before me, so well suited to the wants of all the people of the State, and so necessary to their convenience, embracing all interests except those of the cable company, should not be lost or destroyed, save for the most potential reasons.

This company has, under the provisions of this bill, the same opportunity to organize, for the purpose of introducing their system upon the streets of the city, as any other company that may be formed using a different motive power. It has but to surrender the uncertain advantages which they may have acquired under a law of

doubtful applicability to their professed wants, and proceed under a law which will give them a safe and sure footing. With this company in the field, claiming under rights derived from proceedings already had, litigation and dispute between it and corporations formed under the new law would surely follow, resulting in delaying construction by either company, and consequent inconvenience to the citizens. There is, I think, an advantage in having but one law under which this class of corporations shall be organized. Their obligations to the people and to the State under a single system are more definite and certain, and better understood.

If the section thus strongly objected to had been omitted, I am by no means sure I would have refused my signature to the bill on that account, but I do not think I am justified, upon a full consideration of all the circumstances, in disapproving the bill as now presented.

GROVER CLEVELAND.

FIRST MESSAGE OF GOVERNOR ROOSEVELT RELATING TO TAXATION OF PUBLIC FRANCHISES.

(Public Papers of Governor Roosevelt, 1899, pp. 54–57.)

State of New York,
Executive Chamber,
Albany, March 27th, 1899.

TO THE LEGISLATURE:

The tax laws of this State are in an exceedingly unsatisfactory condition, and I do not see how they can be put upon a just and wise basis save, after careful investigation, by legislative action. At present, the farmers, the market gardeners, and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes, while at the same time many of the efforts to remedy this state of affairs, notably in the direction of taxing securities, are not only unwise, but inefficient, and often serve merely to put a

premium upon dishonesty. It would not be well to make any class of our citizens feel immunity from paying taxes, for this would almost certainly result in extravagant expenditure both in the State and in the municipalities, against which the surest safeguard is the immediate pressure on the purses of our citizens. But though complete immunity from taxation by the people at large is not desirable, the fact remains that at present taxation is excessive and badly distributed.

There is evident injustice in the light taxation of corporations. I have not the slightest sympathy with the outcry against corporations as such, or against prosperous men of business. Most of the great material works by which the entire country benefits have been due to the action of individual men, or of aggregates of men, who made money for themselves by doing that which was in the interest of the people as a whole. From an armor plant to a street railway, no work which is really beneficial to the public can be performed to the best advantage of the public save by men of such business capacity that they will not do the work unless they themselves receive ample reward for doing it. The effort to deprive them of an ample reward merely means that they will turn their energies in some other direction, and the public will be by just so much the loser. Moreover, to tax corporations or men of means in such a way as to drive them out of the State works great damage to the State. To drive out of the community men of means and the men who take the lead in business enterprises would probably entail, as one of its first results, the starvation of a considerable portion of the remainder of the population.

But while I freely admit all this, it yet remains true that a corporation which derives its powers from the State should pay to the State a just percentage of its earnings as a return for the privileges it enjoys. This should be especially true for the franchises bestowed upon gas companies, street railroads and the like. The question of the municipal ownership of these franchises cannot be raised with propriety until the governments of all

municipalities show greater wisdom and virtue than has been recently shown, for instance, in New York City; and the question of laying and assessing the tax for franchises of every kind throughout the State should, in my opinion, be determined by the State itself. I need not point out to you that in foreign communities a very large percentage of the taxes comes from corporations which use the public domain for pipes, tracks and the like. Whether these franchises should be taxed as realty, or whether it would be wiser to provide that after the gross earnings equal, say, ten per cent. of the actual original cost, then five per cent. of all the gross earnings over and above this shall be paid into the city treasury, or whether some yet different plan should be tried, can only be settled after careful examination of the whole subject. One thing is certain, that the franchises should in some form yield a moneyed return to the Government. To put on a tax here and there as new franchises are asked for may be advisable, but of course is inequitable, to the extent that it handicaps the few thus taxed in their competition with the untaxed corporations; and it may be that now and then some franchise to perform an especially needful and risky service should not be thus handicapped at all. It is far better to have a general scheme of taxation, one that shall apply, for instance, to railroads entering New York City, to railroads operating within the city, to gas companies, electric companies and the like.

Many commissions have been created by legislative enactment in this and other States in the past, and it has been the almost universal experience that however excellent the reports of such commissions might be, if they were made up of men outside the Legislature, the Legislature paid little or no heed to them. I therefore recommend that you create a joint committee of the Senate and Assembly to investigate the subject in full, and to report to the next Legislature a proper scheme of taxation.

THEODORE ROOSEVELT.

SECOND MESSAGE ADVISING ACTION IN THE MATTER OF THE TAXATION OF PUBLIC FRANCHISES.

(Public Papers of Governor Roosevelt, 1899, pp. 102–110).

STATE OF NEW YORK, EXECUTIVE CHAMBER.

ALBANY, May 22, 1899.

TO THE LEGISLATURE:

I have called you together in Extraordinary Session for the purpose of considering the subject of the taxation of franchises.

My message to the Legislature of March 27, 1899, ran in part as follows:

"At present the farmers, the market gardeners and the mechanics and tradesmen having small holdings, are paying an improper and excessive portion of the general taxes, while at the same time many of the efforts to remedy this state of affairs, notably in the direction of taxing securities, are not only unwise, but inefficient, and often serve merely to put a premium upon dishonesty. . . .

"There is evident injustice in the light taxation of corporations. I have not the slightest sympathy with the outcry against corporations as such, or against prosperous men of business. Most of the great material works by which the entire country benefits have been due to the action of individual men, or of aggregates of men, who made money for themselves by doing that which was in the interest of the people as a whole. From an armor plant to a street railway, no work which is really beneficial to the public can be performed to the best advantage of the public save by men of such business capacity that they will not do the work unless they themselves receive ample reward for doing it. The effort to deprive them of an ample reward, merely means that they will turn their energies in some other direction; and the public will be by just so much the loser. Moreover, to tax corporations or

men of means in such a way as to drive them out of the State works great damage to the State. To drive out of a community the men of means and the men who take the lead in business enterprises, would probably entail, as one of its first results, the starvation of a considerable portion of the remainder of the population.

"But while I freely admit all this, it yet remains true that a corporation which derives its powers from the State, should pay to the State a just percentage of its earnings as a return for the privileges it enjoys. This should be especially true for the franchises bestowed upon gas companies, street railroads and the like. The question of the municipal ownership of these franchises cannot be raised with propriety until the governments of all municipalities show greater wisdom and virtue than has been recently shown, for instance, in New York city; and the question of laying and assessing the tax for franchises of every kind throughout the State should in my opinion be determined by the State itself. I need not point out to you that in foreign communities a very large percentage of the taxes comes from corporations which use the public domain for pipes, tracks and the like."

I stated that the power of assessing the tax on franchises should be left with the State authorities—not the local authorities—because in my view this was desirable both for the sake of providing against improper favoritism of or discrimination against corporations by the local authorities, for the sake of working equity as between the franchises in different localities, and finally for the sake of providing for the cases where a railroad or telephone or telegraph line runs through several different communities.

Many representatives of corporations owning franchises heartily approve of having them properly taxed; and I am confident that, in the end, this will be of positive benefit to the franchise owners, and in no way oppressive to them, save as all taxes are oppressive to all owners of property.

The line of cleavage between good and bad citizenship

does not follow the line dividing the men who represent corporate interests from the men who do not; it runs at right angles to it. We are bound to recognize this fact, to remember that we should stand for good citizenship in every form, and should neither yield to demagogic influence on the one hand, nor to improper corporate influence on the other. There is no intention of oppressing people who have put their money into franchises. We recognize that as in the case of all legitimate business they benefit not only themselves but the community at large. If a franchise is worth very little, it should be taxed very little; but where the franchise is of great value, it certainly should be heavily taxed; and the value is of course based upon the use of the city's or State's real estate. Such use of the public real estate should not be given without substantial returns, returns not only in the way of service to the public which of course a street railway or a gas company gives, precisely as the proprietor of a grocery or dry goods store gives it, but also in the way of bearing a just share of the burden of taxation; again, precisely as the owner of the grocery or dry goods store bears his share, the difference being that a railroad company, for instance, owes infinitely more than the proprietor of a big business establishment does, to the real estate itself. Of course, this value differs greatly in different places. Where population is dense, as in New York City, the real estate along which the tracks are laid on Broadway may be worth an immense amount for every lineal foot, exactly as the real estate fronting this portion of Broadway is worth an immense amount for every lineal foot. In sparsely settled districts, however, the value of the real estate of the railroad will diminish greatly, just as the value of the realty through which it runs diminishes.

I am perfectly well aware that as Chief Justice Marshall says: "The power of taxation is the power of destruction." But this applies to every species of property. If demagogues or ignorant enthusiasts who are misled by demagogues could succeed in destroying wealth, they

would of course simply work the ruin of the entire community; and first of all, of the unfortunates for whom they profess to feel an especial interest. But the very existence of unreasoning hostility to wealth should make us all the more careful in seeing that wealth does nothing to justify such hostility. We are the true friends of the men of means, we are the true friends of the lawful corporate interests which do good work for the community, when we insist that the man of means and the great corporation shall pay their full share of taxes and bear their full share of the public burdens. If this is done, then sooner or later will follow public recognition of the fact that it is done; and when there is no legitimate basis for discontent, the American public is sure sooner or later to cease to feel discontent.

The Legislature passed, and there is now before me, a bill for the taxation of franchises by treating them as realty. After watching the progress of this bill I became convinced that the opposition to it was less to its particular features than to the general principle of taxing franchises in any way; in other words, I became convinced that any really effective measure of taxation aimed at franchises would be vigorously opposed. It therefore became of the utmost importance to secure this year some statutory enactment which would distinctly recognize the principle which we seek to establish. Toward the end of the session it became evident that the influences against the taxation of franchises would be content with nothing save the defeat of any measure of substantial relief; and a measure of less than substantial relief I would not accept. Finally it became evident that the Legislature could pass only one bill and that without amendment. I therefore sent in a special message asking for the passage of this bill. It was passed on the last day of the session. It represents a long stride in the right direction, and one from which there must be no retrogression.

Nevertheless, it can be greatly bettered if amended in two important particulars. In its essential principle, that of taxing franchises as realty, it is right and proper.

After much study of the question, I am convinced that in this way we can come nearer to doing justice than in any other which has as yet been proposed. It is no new thing to treat franchises as realty. They are so treated in Washburn's work on real property, and by Chancellor Kent; but under the laws of New York as they are now a franchise cannot be taxed except by special statute, and as a matter of fact this extremely valuable species of property is in very many, if not in most cases, untaxed or taxed far below its value in comparison with other kinds of real estate. Local franchises are granted for various purposes and under varying conditions; sometimes by special statute and sometimes by the municipal authorities under a general statute. The value of the franchise of course varies widely in different localities, depending upon a variety of circumstances; but a great part of its value is dependent upon the same causes which operate to make other kinds of real estate more valuable in one locality than in another. The franchise is inseparable from the property of the corporation in the street, whether this property consists of poles, pipes or tracks, above the ground, under the ground or on the ground. The right to lay a railroad track and operate a railroad in a public street cannot be separate or dissociated from the railroad itself. This is equally true of the right to lay water and gas mains and the like. The franchise is a necessary and inevitable element of value and is a proper subject of consideration in determining the taxable value of the real property of the corporation enjoying it. The right to occupy a street should not be classed as an intangible something, distinct from the other property of the company, but should be treated as a necessary incident to the tangible property and one to be considered in measuring the value of the whole property. The Nichols law in Ohio which provides for the taxation of certain kinds of corporations such as telegraph and telephone companies and the like, doing business in the public streets proceeds along these lines, and has in practice been found to work admirably. It is possible that further

experience may enable us to find some better method of taxing franchises, but with our present knowledge it is certainly wisest to tax them as realty.

Under the bill before me the assessment will be levied by the local authorities. This would result in many cases in a dozen different sets of local authorities assessing the value of different parts of the same franchise. It is on every account far better that this assessment should be delegated to the State authorities who will necessarily ascertain all the conditions affecting the franchise and obtain information which will enable them to judge of the value of the franchise in the different localities in which it is exercised. The Board of State Tax Commissioners can collate the facts, compare conditions and determine values as a result of a wider range of observation and experience than can be obtained by local officers, and under them the system of assessment will tend to produce justice, harmony and uniformity. This is the system adopted under the Nichols law and it has worked well in practice.

Furthermore, the bill before me fails to take account of the fact that, in a very unequal and irregular way, many corporations do already pay a certain, though usually an utterly inadequate, sum in taxes. Some pay nothing at all to the local municipalities; but others pay sums varying from one to five per cent. on their gross earnings. The amounts have been determined in the most haphazard manner and bear no proportion whatever to the value of the franchises or to their earning capacity. It is obviously unjust, when introducing a system under which we believe that these franchises will for the first time be fully and fairly taxed according to their respective values, not to allow for this existing and inequitable taxation. Accordingly it should be provided that from the sum assessed by the State authorities as the tax which a corporation must pay because of its local franchise, there shall be deducted the amount already annually paid by it to the locality for such franchise. In no other way is it possible to tax these corporations with

uniformity and equity. It is contended by the advocates of the bill that in reaching the value of the franchise under the new law the amount thus paid away in taxes must be allowed for and deducted anyhow, but it is not certain that this would be done, and in any event the principle should be definitely established in the law itself. There can be no possible opposition to putting it in the law by any man who is anxious to tax corporations as other property is taxed, and who believes that this end can be attained by taxing them as realty. Either by taxing them as realty we shall tax them at their full value, or we shall not: if, as we hold, the former is the case, it would be unjust to tax them for more than their full value, and this would happen were not these existing taxes deducted.

If it is claimed that the particular method of assessment by the State Tax Commission may be improper or unjust, provision can be made for the same appeal to the courts that now lies in the case of any assessment on other kinds of property.

Accordingly, I recommend the enactment of a law which shall tax all these franchises as realty, which shall provide for the assessment of the tax by the Board of State Tax Commissioners and which shall further provide that from the tax thus levied for the benefit of each locality there shall be deducted the tax now paid by the corporation in question to the locality. Furthermore, as the time for assessing the largest and wealthiest corporations, those of New York and Buffalo, has passed for this year, and as it will be preferable not to have the small country corporations taxed before the larger corporations of the cities are taxed, I suggest that the operation of the law be deferred until October first, of this year.

THEODORE ROOSEVELT.

Sept. 25, 1899.

EXTRACT FROM "THE GREATER NEW YORK CHARTER."

CHAPTER 378, LAWS OF NEW YORK, 1897; CHAPTER XXII, TITLE 7, SECTION 1556.

"A code or other volume containing the ordinances and by-laws of the city, published by authority of the Municipal Assemby, shall be *prima facie* evidence in all courts of justice of the authenticity of such ordinance and by-laws."

PROCEEDINGS OF MUNICIPAL ASSEMBLY, VOL. III, PAGE 191. JAN.-DEC., 1900.

EXTRACT FROM COMMITEE ON FINANCE OF THE BOARD OF ALDERMAN, AUG. 15, 1900.

BOROUGH OF MANHATTAN AND THE BRONX.

County of New York.

	FOR CITY PURPOSES.	FOR COUNTY PURPOSES.	TOTAL.
On property liable to taxation for city, county and State purposes.....	1.93632438	.31138853	2.24771291
On property exempt from local taxation for State purposes.....	1.93632438	.08288888	2.01921326

STIPULATION THAT CASES INVOLVING LEASED LINES SHALL ABIDE THE EVENT OF PRINCIPAL SUITS.

SUPREME COURT,

ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* METROPOLITAN STREET RAILWAY COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 1.
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* TWENTY-THIRD STREET RAILROAD COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 2.
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* TWENTY-EIGHTH AND TWENTY-NINTH STREET RAILROAD COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 3.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* FULTON STREET RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 4.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THIRTY-FOURTH STREET CROSSTOWN RAILWAY COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 5.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* BLEECKER STREET AND FULTON FERRY RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 6.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* FORTY-SECOND STREET AND GRAND STEET FERRY RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 7.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 8.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* NINTH AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 9.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* EIGHTH AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 10.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* SIXTH AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 11.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* SECOND AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 12.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* BROADWAY AND SEVENTH AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 13.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* NEW YORK AND HARLEM RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 14.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE THIRD AVENUE RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 17.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 18.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 19.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE UNION RAILWAY COMPANY OF NEW YORK CITY (BRONX)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 20.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* UNION RAILWAY COMPANY OF NEW YORK CITY (MANHATTAN)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 21.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE WESTCHESTER ELECTRIC RAILROAD COMPANY (BRONX)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 22.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* WESTCHESTER ELECTRIC RAILROAD COMPANY (New Rochelle)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 23.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE WESTCHESTER ELECTRIC RAILROAD COMPANY (Pelham)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 24.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE WESTCHESTER ELECTRIC RAILROAD COMPANY (Mt. Vernon)

AGAINST

THE STATE BOARD OF TAX COMMISSIONERS.

No. 25.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE SOUTHERN BOULEVARD RAILROAD COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 26.
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE TARRYTOWN, WHITE PLAINS AND MAMARONECK RAILWAY COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 27.
THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* THE YONKERS RAILROAD COMPANY AGAINST THE STATE BOARD OF TAX COMMISSIONERS.	No. 28.

WHEREAS, all of the above entitled proceedings were by orders of the Supreme Court duly referred to Hon. Robert Earl as Referee to take and report to the Court the evidence of the respective parties in said proceedings with his findings of fact and conclusions of law; and

WHEREAS, said proceedings have been heard by said Referee together under a stipulation that the testimony given as far as applicable should be evidence in each proceeding; and

WHEREAS, said Referee has reached a decision in all of said proceedings, and has made findings of fact and conclusions of laws in the first two above entitled proceedings and has reported the evidence taken by him to the Court,

IT IS STIPULATED AND AGREED, by and between Hon. John C. Davies, Attorney-General, representing the State Board of Tax Commissioners, and the attorneys for all of the relators in said proceedings, as follows:

FIRST.—The Referee's findings and conclusions of law and his report with the evidence made in the first two above-entitled proceedings shall be presented by the Attorney-General to the Special Term of the Supreme Court in the County of Albany, and the cases moved for trial by him at such term thereof as may be agreed upon or for which the said proceedings may be noticed for trial by either party.

SECOND.—No further proceedings shall be had before the Referee or before the Court in the other above-entitled proceedings until the final determination of the trial and appeals to be taken in the first two above entitled proceedings.

THIRD.—In case the Referee's findings of fact and conclusions of law made as aforesaid are finally sustained, an order may be entered in each of the above entitled proceedings other than the first two reducing the assessment made by the State Board in each case by thirty-three (33) per cent. as to special franchises located in New York County, and by ten per cent. as to special franchises located in Westchester County, and directing that the assessment thus reduced be taken as the value for the purposes of assessment and taxation of the special franchises of the relator in each case, and that the assessment against each one of the said relators be corrected upon the assessment roll and tax books of the City of New York, or other municipality, as the case may be, for the year 1906, as directed in said order.

FOURTH.—That in case it should become necessary that findings of fact and conclusions of law be made in said

above entitled proceedings other than the first two, the relators agree that findings may be signed by any Justice of the Supreme Court in the Third Judicial Department similar in all respects to the findings made in the first two above entitled proceedings and varying from them only so far as may be necessary to conform to the particular facts as to each case, the party so applying to give eight days' notice to the other of said application.

FIFTH.—That upon the trial of each or either of the first two above entitled proceedings at Special Term, either party to such proceeding may apply to the Court for further or different findings of fact or conclusions of law or both and that in the event of the findings being signed by a Justice of the Supreme Court, in any other of the said above entitled proceedings, as provided for in the preceding paragraph of this stipulation, either party may in like manner apply to said Justice for further findings of fact or conclusions of law or both in such other proceedings.

SIXTH.—If the relator so elects, the proceeding brought on the relation of the Twenty-third Street Railway Company (No. 2) shall, on notice in writing to the defendants, abide the event of the proceeding brought on the relation of the Metropolitan Street Railway Company (No. 1), and upon such election being made, the above entitled proceeding No. 2 shall take the same course as the other twenty-four proceedings, and shall abide the event of the final determination of proceeding No. 1 in conformity with the provisions of this stipulation.

June 14, 1902.

HENRY A. ROBINSON,
Attorney for Relators in Proceedings 1-14 inclusive.

HOADLY, LAUTERBACH & JOHNSON,
Attorneys for Relators in Proceedings 17-28 inclusive.

JOHN C. DAVIES,
Attorney-General,
Attorney for Respondents.